LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

THE PLANNING (NORTHERN IRELAND) ORDER 1991

THE LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972

THE LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF REFERENCES

R/19/1992 & R/4/1994

PHILIP A McINTYRE - CLAIMANT

ALLIANCE & LEICESTER BUILDING SOCIETY - CLAIMANT

LLOYDS BANK PLC - CLAIMANT

AND

DEPARTMENT OF THE ENVIRONMENT - RESPONDENT

RE: THE ARCADIA, PORTRUSH

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

Belfast - 5th May, 27th June, 13th and 14th September 1995 and 21st March 1996

The References came about in this way. The Arcadia was a former ballroom in Portrush, a seaside holiday resort, and was a famous landmark both in the townscape and in social history. The oldest part of the property has been described as 'a mannerist stucco palais, worthy of the promenade at Nice and firmly founded upon a rock'. The other part was built with more of an eye to function than to architectural merit. The former ('Building No 1' for convenience only) was constructed in and around 1920 and the latter ('Building No 2' for convenience only) was built in and around 1950. Both had been altered more than once over the years.

The use as a ballroom ceased but the premises continued to be used, in general terms, for leisure, entertainment and ancillary purposes. Mr McIntyre bought the freehold interest in the premises in the early 1980's with an eye to its future development but with the benefit of the prospect of use of the standing buildings to generate current income. In recent times, the premises or parts of them had been put to a variety of uses including a discotheque, a licensed restaurant, a cafe, a snooker club, an amusement arcade and a gymnasium/health studio. Demand for the premises had fluctuated and over the years he had sold, and bought back parts and leased part.

About the beginning of the 1990's a scheme was proposed for redevelopment of the site, with commercial and student accommodation. Mr McIntyre thought he could make a substantial profit from it. But that was not to be. An Application for Planning permission, in

September 1991, for the development was refused by the Department of the Environment ('the Department') in December 1991. He appealed to the Planning Appeals Commission. The Appeal was refused. He served a Purchase Notice on the Department. They served a Counter Notice and Mr McIntyre referred the matter to the Lands Tribunal.

In June 1993 Lloyds Bank plc, as mortgagees, obtained an Order for Possession of part of the property and on 16th February 1994 the Alliance & Leicester Building Society, as mortgagees, obtained a similar Order in respect of the whole. The Orders were not served.

But then, matters took a different turn, the Department used its powers of compulsory purchase under the PLANNING (NORTHERN IRELAND) ORDER 1991, and by Vesting Order, which became operative on 21st February 1994, ownership of the property became vested in the Department. They were vested under the Planning (NI) Order 1991 ".... in the interest of proper planning of an area in which the lands are situated". By this time, to all intents and purposes, business use had ceased and the buildings were vacant. Before and after the Vesting date, the buildings were vandalised and deteriorated: their actual condition at the vesting date was a matter of some conjecture and some dispute.

The parties having been unable to agree compensation, Mr McIntyre referred the matter to the Tribunal for determination. The Purchase Notice having been overtaken by the Vesting Order, the Reference proceeded on the issues arising from the latter.

During the Hearing, the Tribunal was informed that the Department had commenced some works to remove the mezzanine floor in Building No 2. The Tribunal viewed the premises as soon as practical and the conclusion it comes to disregards any alterations that have taken place since the Operative Date.

Appearances

Patrick Good instructed by Tughan and Co appeared for Mr Philip A McIntyre who also gave evidence. He also called, as witnesses of fact, Mr Liam Butcher, Mr Ivan Cooper, Capt Robert James Mitchell and, as expert witnesses, Mr David Neil Mills, a Fellow of the National Association of Estate Agents with over 21 years of practical experience in the valuation of both residential and commercial properties, and Mr Alymer Sherrard, an experienced Senior Architectural Technician. In the opinion of Mr Mills, at the date of Vesting the open market value of the entire property was represented in the sum of £310,000.

Henry Toner, appeared in respect of R/4/1994, instructed by Francis Hanna for the Alliance & Leicester Building Society, as mortgagees. He called Mr Hugh Alistair Dunn, a fellow of

the Royal Institution of Chartered Surveyors and who had been involved in sales, lettings, valuations and rent reviews in a wide variety of types of commercial property since entering private practice in 1981. He had formerly been employed in Valuation & Lands Agency where he had been especially involved in compensation work and, in his opinion the value of the property was £165,000.

Francis O'Reilly instructed by the Departmental Solicitor appeared for the DEPARTMENT of the ENVIRONMENT for NORTHERN IRELAND. He called as expert witnesses, Mr Raymond White an Architectural Technician with 20 years experience employed by the Department of Environment Works Service and Mr John Michael Graham, a senior valuer in the Valuation & Lands Agency who had served in the Londonderry District Office for six years and, in whose opinion the value of the property was £100,000.

The Town, Location & Access

Portrush was primarily a seaside resort town enjoying a seasonal trade. In recent years businesses had become more dependent on day trip visitors.

The Arcadia occupied a prominent position on the Portrush sea front. It was situated on the east side of the Portrush Peninsula on an outcrop of rock known as Rock Ryan, had frontage to the sea on three sides and linked the town centre with the western end of a promenade leading to East Strand. It enjoyed spectacular views over the two mile East Strand beach to the White Rocks, Skerries Islands and the Causeway Coast, but ground level, immediately adjacent to the building, was approximately 2 metres above sea level and the buildings were very exposed to the elements particularly during the winter months.

The nearby properties comprised a combination of residential, retail and leisure properties. There were two amusement arcades nearby at the top of the steps to Main Street. The Arcadia, for statutory planning purposes was within the limit of development but outside the centre business district of Portrush. The immediate area was a pedestrian area predominantly used for casual recreation as a small public garden.

The site had no frontage to the public road. Pedestrian access to the site was available either by steps from the public road or along a promenade. Vehicle access was restricted to delivery vehicles, from Causeway Street and over an unadopted roadway owned by, maintained by, and by permission of, the District Council. There was no provision for vehicle parking within the property.

The Buildings

Almost the entire site was covered by the buildings. Building No 1 comprised a 1920's neo-Baroque ornate two storey building with a part single and part two storey extension and Building No 2 comprised a plain 1950's ballroom/auditorium which at one time had an entertainment licence for 1,200 people. It was a single storey property but a mezzanine floor had been added using a timber flooring on a steel frame. Building No 2 also provided 7 self-contained kiosks/shops units and office accommodation. Although the buildings were contiguous they were not intercommunicating. There was an awkward link between the two which sit at an angle to each other. Alternations had been made over the years.

Building No 1 was of rendered stone and brick walls with a slate covered pitched roof, Building No 2 was built as a single storey using a steel portal frame, and the main roof was corrugated asbestos sheeting. The remainder of the roofs included areas of asphalt covered concrete and timber.

Building No 1 had a total area of about $545m^2$ with about $175m^2$ of this on the first floor. Building No 2 had a total area of about $1160m^2$ almost equally divided between the ground and first floor. The parties all agreed that the total ground floor area was about $1000m^2$ and the first floor about $700m^2$.

The site area was agreed to be $1691m^2$.

The Sequence of Events

Mr McIntyre, gave evidence that he was quite familiar with Portrush and had been involved in various business ventures there. He had known of the Arcadia all his life and when it came on the market in early 1979 he bought it, paying £33,000 for the premises and £30,000 for the fixtures and fittings. The premises were used partly as a restaurant and partly for entertainment. At that time they were licensed, he said he removed the licence and spent about £75,000 on Building No 2 converting it to an amusement arcade and putting in a first floor.

He sold Building No 1, about 1980, for about £52,000 to purchasers who refurbished the ground floor disco. He had always planned redevelopment of the site and that was not impeded by selling part because, if the part sold off had proved successful, that would have helped the remainder.

Mr McIntyre thought the business seemed to be succeeding but then there was a difficulty in the partnership and disturbances in Portrush reduced the visitors in early 1980. Mr McIntyre repurchased Building No 1, with an eye to development if the market picked up, in October 1983, for about £25,000 but made no use of it other than renting part of the first floor for a beauty salon. From about 1983 until 1989, Building No 2 operated as a snooker hall on the first floor and an amusement arcade on the ground floor.

Mr McIntyre did not agree that ballroom dancing, as a social activity, had been in decline from the 1960's. He would not accept that the various ventures attempted on the premises had failed. The disco and licensed restaurant had been full. The disco failed because of the down turn of tourism, the licensed restaurant was badly run and had only closed because of a fall out within the partnership and the amusement arcade use was only a stopgap use until a proper use could be found.

In 1989 Mr McIntyre was involved in other businesses and his son was no longer free to manage the arcade so he planned to sell the premises as he wanted to reduce his borrowings and consolidate in his core business. At that time Building No 2 was being used as an amusement arcade, Building No 1 was vacant.

In early 1990 Mr McIntyre instructed Mr Liam Butcher of McQuitty Ross, as estate agents. Their brief was to test the market either as bricks and mortar or a going concern. He prepared a brochure. The price guide was £350,000 for bricks and mortar, £400,000 as a going concern. He had advertised the property for sale and had it on the market during the closed season of 1989/90. He had received several enquiries. He considered the response he had then was extremely good, there were between 30 and 40 enquirers that he considered were genuine. Generally people appeared to have been put off by the price. A large proportion were property developers or local and regional architects with a view to development for second homes. Mr Butcher said a number of other enquiries would have been for a mixed development with apartments over ground floor shops and restaurant. Most would demolish Building No 2 and keep Building No 1 which lent itself to redevelopment. It was the landmark building, the older part.

Mr McIntyre said he made informal planning enquiries before and after putting the property on the market and was informed that there was the possibility of grant aid and the Arcadia would figure in the new tourist plan for the Causeway Coast. It was on the market for a year. With regard to his asking price of £400,000 he said "you always ask more".

The 1989/90 Offer

A Mr Cully, from Bray, who was having business problems in the Dublin area as a result of revocation of licenses for amusement arcades, came to see him and spent several days in the Portrush area. Mr Butcher said he had made some enquiries in Dublin and confirmed that Mr Cully would be in a position to purchase. Mr Cully had come from Dublin on three occasions and on the second visit made an offer of £250,000 and then £265,000. Mr Butcher had met him on the site with Mr McIntyre, who at that time had been negotiating with another party, a Mr Ray Cashel, representing the Student Housing Co-Op Ltd ('SHAC'), a registered Housing Charity. When the offer was not accepted he went back to Dublin and the interest ceased. Marketing continued until late 1991 and more or less ceased after that.

There was a difference between Mr Butcher's affidavit evidence in which he said several enquiries and his evidence at the Hearing in which he said 30 or so. He did not produce an offer book which might have contained a contemporaneous record. Of the 30 plus enquiries the only offer came from Cully.

Mr McIntyre said he had approached the Alliance & Leicester for a loan in May or June 1989 because he needed to refinance. The first mortgage was in March 1989 to Lloyds and the second was in September 1989 to the Alliance & Leicester. Mr McIntyre was definite that he thought the property was not on the market until after he had refinanced.

Negotiations with SHAC

Mr McIntyre outlined his negotiations with SHAC. SHAC had been on the scene at least $2^1/_2$ years before 1989 represented by a Mr Ray Cashel. Architects had done a vast amount of work. The scheme was a £1.9 million development from which it was proposed that Mr McIntyre would get $650m^2$, of ground floor commercial premises, £100,000 and a share of the developers profit, a profit on the scheme of about £500,000. He was going to carry out the development as builder. By 1988 they had gone as far as they could and in 1989 they had a Total Indicative Cost figure and SHAC had money available. SHAC made an application for Planning Permission in September 1991, but the deal had been agreed long before that. There were no documents setting out arrangements with SHAC. Although a report prepared by the Valuer for the Northern Ireland Federation of Housing Associations, an umbrella body which included SHAC, dated 14th November 1991, indicated otherwise, he would not accept that all that was envisaged by SHAC was a site purchase.

He said the snooker club and arcade had been stopped in 1989 because SHAC wanted the project to start the following June but, having been given the opportunity to contact his office, he informed the Tribunal that the last takings were in fact on 31st October 1991. He was asked why if he ceased trading in 1991 they applied for an Amusement Permit. He thought it was his son who had made the application. The application was not pursued: the electrical services at the premises did not comply with requirements.

Mr McIntyre would not accept that the decision to cease trading was because the business was no longer viable. From 1989 onwards he was looking for the maximum money he could get from the property and any businesses being carried on the premises were holding operations. It was put to McIntyre that the combination of having the property on the market and the request to borrow on the basis of the existing buildings clearly demonstrated no future use for the property. Mr McIntyre said that was not so, he borrowed money on several properties to change his borrowing arrangements. All business use ceased in 1991 because SHAC wanted the place clear.

Mr McIntyre's recollections were confused and confusing but it seems that he was also dealing with SHAC on another site in Portrush at the same time. He was originally involved in that site but had resigned as a Director of the Development Company. The company went into receivership.

The Planning Appeals Commission:

Mr McIntyre felt he had been misquoted in the Appointed Member's Report of his evidence to the Planning Appeals Commission:

> "Mr McIntyre told of the change in the pattern of tourist activity since the 60s when the Arcadia had been a thriving dance hall. Custom and fashion had changed and the large groups from the United Kingdom no longer holidayed in Portrush.
>
> He spoke of the many tourist orientated uses which had been tried on this site - a discotheque, a licensed restaurant, a snooker club, an amusement arcade, a gymnasium - and which had failed, in some cases after only six months. He further exemplified the problem by relating that around 1981/82 he had sold the premises. They had been refurbished at considerable cost but the business had folded after one season and had been put up for sale. There had been no bidders for $2/2^1/_2$ years after which he repurchased it for less than half the price for which he had sold it.

A tourist feasibility study had not identified any viable tourist related use. The season was short and there were parking difficulties. The planning authority and the Tourist Board doubted that funding was possible.

If this site were to be developed as a major tourist attraction this would add to the traffic problem. It was a difficult site - water sports would be ideal. Other than this, the only other use would be part residential/part shops."

and later

"[Mr McIntyre] could not accept that if the right product had been introduced into the complex, a profit could have been made. There is a change in the licensing law which refers to the type of machine permitted in an amusement arcade."

Mr McIntyre said he would have had difficulty raising funds for anything else, and he was doing his utmost for a successful result at the Planning Appeals Commission.

The Purchase Notice

Captain Mitchell had lived in Portrush since 1957, served on the local Council in Coleraine for many years, served on the Court of the University at nearby Coleraine and had been involved in planning consultations. He had been anxious to see the student housing accommodation scheme built and had supported Mr McIntyre. When Planning Permission was refused on appeal in March 1992, he had advised Mr McIntyre that the site was blighted and the only option was to serve a Purchase Notice, on the Department, which he did in July 1992, relying on Article 94 of the Planning (NI) Order 1991, ie to the effect that the premises had become incapable of reasonably beneficial use. He would describe the Arcadia as derelict and getting more derelict.

In their counter notice the Department relied on use as a snooker club, disco, cafe/restaurant/takeaway (or mixture of same) including small scale ancillary retailing or change of use or redevelopment for a tourist related use. Mr McIntyre appealed to this Tribunal by a Reference R/19/1992.

The Season's Lease

Mr Cooper said he had experience of advising companies with insolvency or similar difficulties. He had known Mr McIntyre for many years and he had sought assistance on a wide range of matters including the Arcadia. Mr Cooper encouraged him to consolidate his business and persuaded him that the Arcadia building should be let. Mr Cooper did not

market the premises through an estate agent because there were circumstances in which he could better get rid of property because of his large web of contacts. In 1993, coincidentally a Mr Harkin came to him. Mr Harkin operated a market trading business in Strabane Eglinton Airport, Derry and owned a number of properties. He wanted to take the property for a season and Mr Cooper negotiated a lease of the ground floor area of the main hall for a term of six months from the 1st April 1993 at £2,750 per month. He used the premises as an indoor market. Mr McIntyre was responsible for the repair and condition of the exterior.

The Option to Purchase

Mr Harkin did some painting and tidying up and Mr Cooper thought he was very interested in purchasing because he was moving from Derry to Portrush to live. He insisted on an option to purchase in the lease and an option was agreed after some haggling at £300,000. According to Mr Cooper Mr Harkin met with the planners with a Councillor and his solicitor, his idea was an amusement arcade with hotel over. Mr Harkin did not exercise the option. After that, Mr Cooper had no further role in relation to the Arcadia. In his view it became clear that the land was blighted.

The Vesting Order

Mr McIntyre said he had not put the property back on the market because the planners had indicated that they would put the Purchase Notice on hold and go down the road of a friendly Vesting Order.

A Vesting Order was made and became operative on 21st February 1994.

The Certificate of Alternative Development

In March 1995, Mr McIntyre obtained a Certificate of Alternative Development from the Department. This stated that "planning permission might reasonably have been expected to be granted for:

i. educational, recreational and cultural centre
ii. public bar, restaurant, disco and shops
iii. water sports centre subject to the centre not being used as a base for motorised water sports
iv. a small hotel with conference facility and restaurant subject to the provision of satisfactory parking and servicing arrangements
v. sea life aquarium

vi. indoor children's play park and restaurant
vii. wax works and museum, restaurant and bar, arcade and shops

and, in the case of redevelopment the above permissions would have been subject to condition on size, height, mass and design and actual area to be developed."

At the date of vesting, in February 1994, with the various uses permitted in the Certificate of Alternative Development Mr McIntyre would still see the Arcadia as a viable site given the influx of tourism. He would like to have some water sports, cafeteria, possibly small licensed restaurant and shops, possibly an hotel. Student housing was the only use for which finance was available. He did not rule out other uses but he did not have the money to redevelop.

Licenses

At the date of vesting there was no Amusement Permit under the Betting Gaming Lotteries and Amusements (NI) Order 1985 and no subsisting Entertainment's Licence. The previous licence (for snooker and amusements) expired in January 1992.

The Condition of the Buildings at the Date of Vesting

There was a dispute about the condition of the buildings at the date of vesting. The Valuers, as well as the buildings experts, expressed views on the condition of the buildings.

Mr Dunn had inspected the property on the 7th April 1994. At that time he considered the buildings wind and water tight. Building No 2 was in pretty presentable order, Building No 1 had been vandalised but was generally satisfactory. It appears he envisaged that the hypothetical purchaser would not be an owner occupier but rather would be an investor contemplating letting, probably in parts. Before showing people around he would prefer some work to have been done to Building No 1. To achieve a letting he considered a landlord would need to do some exterior decoration and probably reinstate the toilets in Building No 1. His experience was that tenants will do their own fitting out. He would withhold other substantial works pending negotiations with tenants over leasing incentives. Mr Dunn did not see demolition as the next step, he did see a commercial future for the Arcadia.

Mr McIntyre said that in the 1980's he always did some maintenance every year on Building No 2: he arranged for the gutters to be cleaned and the building to be painted every Easter. Vandalism was a problem all the time, he always had to replace the odd window and deal with graffiti. There was the occasional break in. After operations

stopped, the exterior was probably not painted. Structurally there were not a lot of defects between 1989 and 1994. The offices on part of the first floor of Building No 2 were used by his son who was there regularly both to use the premises as offices and to keep an eye on the place.

Mr Mills emphasised that he was not a structural engineer but generally the premises seemed sound to him and from his inspection on the 14th March 1995, his gut feeling was that the property was saleable and marketable, investors would still be very keen. Anybody acquiring the property would be refurbishing anyway and so would not be too concerned about the condition. In Mr Mills opinion the buildings were lettable at the date of vesting, had gone down hill because of vandalism and had only deteriorated badly since the DOE had got their hands on them. He did not think that the buildings would have been in a state of considerable disrepair at the date of vesting in February 1994. In his written evidence, he included a report of an inspection of the buildings in November 1994 by Ivan Scott & Associates, Chartered Civil Engineers which indicated that both buildings were structurally sound and adequate, some 8 months after the DOE had vested and the property was bound to have deteriorated in that period. He thought photographs could exaggerate. Since his inspection there had been further vandalism, there were stones inside the building and windows smashed. He had visited the property over the Easter holidays and drunken vandals were attempting to wreck the place.

Mr Dunn had made an allowance of £30,000 for repairs, but that would, he thought, perhaps reflect the condition of the property now rather than at the date of vesting. Building 2 was indeed let from the 1st April 1993 to 30th September 1993. He disagreed totally that the premises should be valued as a site.

He complained that the DOE should have carried out a condition report at the date of vesting. So far as Mr Mills was concerned the property would have deteriorated between February 1994 and July 1994 and the fact that Mr McIntyre refused to give up possession until the autumn of 1994 was a matter between the Department and the Mr McIntyre.

In a letter written by Mr McIntyre to a local newspaper, the "Chronicle" published on 16th May 1993, Mr McIntyre referred to a number of matters in response to press coverage of the Annual General Meeting of Portrush Chamber of Commerce and statements, made at that meeting, regarding the state of the Arcadia Ballroom. He said:

> "I have owned the Arcadia property for 12 years. In that period I have painted the property externally on several occasions. I last had the Arcadia painted in May 1991, prior to opening for the summer season.

The premises have been a constant target for window breaking vandals, graffiti writers and wine consumption within the vicinity of the property. I have had numerous complaints made to the police, although I fully appreciate that they cannot watch the property for 24 hours a day.

Wine drinking and graffiti writing are now an unfortunate aspect of modern Portrush. The problem with vandalism has cost me a great deal of money. I am, however, unable to combat it."

Mr Mills accepted that vandalism may have started long before 1994.

Mr Sherrard, had inspected the property on 12th June 1995, for the first time, and without the benefit of sight of the Department's report. He considered the buildings were overall in very viable, very sound structural condition. If minor to middle of the road works were carried out the buildings could be used and open to the public. They certainly were not at the end of their life.

Mr Sherrard concluded, from that initial inspection, that the buildings were in a fairly watertight condition except for a few problems with windows, flat roofs, flashings gutters etc. The building had been vacant for a long period of time now and the windows, sanitary fittings, etc had been badly vandalised. Whilst Mr Sherrard accepted that there was a possibility of decay, he would not accept that the condition of the roofs, fascia and gutters indicated possible damage to timbers or corrosion of steel trusses. In his view many items did not need to be replaced, for example, the flat roof of the office block could be patched and such patching would give long term life. He accepted that the mineral felt roof over the canteen might be more than 25 years old but disagreed that replacement was necessary. He accepted that there were no eaves or gutters to the flat roof over the toilet block. He would adopt patching to repair flashings where appropriate. Generally speaking he disagreed with the view that elements were beyond repair and should be replaced. He considered that patching would be a satisfactory repair.

He accepted that there was some evidence of water penetration. He accepted there was some timber decay at first floor level but was not satisfied that deterioration was caused by water penetration rather than the building being left unoccupied and unventilated. He would not accept that because the building had been vacant and there had been water penetration there would almost certainly be dry rot present and the fabric would have deteriorated. He had not tested the services.

He would not accept that his comments glossed over the likely effect of water penetration over a number of years. If the work set out in his schedules were carried that would leave

the building weather and water tight in the long term. He had seen much worse buildings and if properly decorated internally, they could be used.

Mr Sherrard was invited to consider what the effect of the building being vacant between February 1994 and June 1995 would be. He agreed there would be an effect and that would be exacerbated by a lack of maintenance but he could not quantify it. He was aware of very severe vandalism, there were a large number of broken windows and roof damage allowing water penetration and he considered vandalism rather than storm damage as the most likely cause of decline.

Mr Raymond White was an Architectural Technician with 20 years' experience employed by the Department of Environment Works Service. He had inspected the Arcadia in July 1994 and not in February 1994 because Mr McIntyre would not permit access. Mr White confirmed that it was a visual inspection, he could not say there were not major structural defects. In his view, neglect of proper maintenance had accumulative results with rapidly increasing deterioration of the structure, fabric and finishes of the building and could well lead to more serious defects. Unless basic repairs were carried out in time and to a good standard, the buildings would become increasingly damp or the structure deteriorate to such an extent that normal jobbing repairs and repainting would no longer be sufficient to restore even an appearance of a well maintained building. It followed that whilst no major defect was uncovered during the superficial inspection, all the evidence to hand relating to the damp penetration confirmed a property in neglect and in need of major refurbishment.

He conceded that if the Department carried out the work they considered necessary, mechanical and electrical work, included oil fired central heating and upgrading the electrics and installing central heating, would be an improvement. His proposals for ventilation would result in some additional work, for example the vent cost for the central heating was £5,000. He would not accept the works would be to a Rolls Royce standard, he maintained one could not do a Rolls Royce job on these buildings. Whether his proposals went further than that strictly necessary to produce a lettable building depended on how long it was expected to last. He accepted that there were many minor items included which would be more appropriate to a dilapidations report and that the ordinary private sector surveyor might have a less keen eye.

As a valuer Mr Graham considered both the original building and the extension were in a state of considerable disrepair and were not lettable in their physical condition. In his opinion, although he did not support it with a quantified calculation in his written evidence, the costs of necessary repairs were beyond economic recovery by way of rental income. Mr Graham would not accept that a fair proportion of the damage appeared to be vandalism. He visited in early February 1993 and there was evidence of damp then. The

windows were blocked and he recommended DOE Work Service prepare a report. Mr Graham drew attention to hazardous materials in two locations, asbestos was used as a roofing material to the former bathroom and for fire protection to the obsolete boiler.

In his written evidence, Mr Dunn thought some decoration and repair was necessary but the buildings were essentially wind and watertight. It was not a prime property and incoming tenants would not expect it to be in pristine condition. He made an allowance of £33,000 for repairs which he described, without further explanation, as "an approximate figure to reflect the possible need for repairs to the fabric to enable the building to be beneficially occupied". This was precisely his estimate of one year's rent and that was the basis for the figure. In his view in preparing valuations it was unusual to employ quantity surveyors and he simply took a view. He was encouraged by Mr Sherrard's figure of £30,000.

Mr Dunn criticised the Departments approach as being mechanistic and more like a dilapidations report. There was no effort to make work cost effective. A landlord would defer some works until he had a tenant in mind and would be concerned only to do whatever was necessary to prevent further deterioration.

Building No 1 had fallen into disrepair and the windows had been covered to deter vandalism. Internally the building was poor decorative condition but on the first floor the former ballroom had remained unaltered and in fair decorative condition. The ground floor was in fair to poor decorative order. In Mr Dunn's view there would be very little expenditure required on Building No 2.

He was asked whether, if he had estimated the rental value at £50,000 a year, he would have deducted £50,000 for remedial works. Mr Dunn said possibly he would. He would not accept that, if the costs were found to be much greater, the valuation would go down because, in his view, a purchaser would not have gone to the extent of getting a fully costed out scheme. His experience was that with secondary properties the market would have been either owner occupiers or investors and their approach would have been the same as his. In his view a commercial purchaser would not employ a building surveyor to produce a schedule of dilapidations such had been produced by the Department. He might use it as a bargaining chip but would not rely on it.

Mr Graham accepted that it was possible that an owner would share Mr Dunn's view ie put in some expenditure and see what the market said, but pointed out that the fact of the matter was that the Arcadia was put on the market as it stood. Mr Graham was asked whether he saw room for a difference between Mr Dunn's approach of spending some money to get it running and the Department's approach of replacing rather than repairing

elements, for example windows. Mr Graham pointed out that if one considered the Certificate of Alternative Development uses it was difficult to see how these could be carried out without a reasonably good building. He did not think that Mr Dunn's approach could work for the Certificate of Alternative Development uses.

Costings for Repair Works

During the course of the Hearing other experts had met separately and managed to produce an agreed narrow band of cost figures for matters on which it was it was not necessary to define an exact amount. The Tribunal is grateful to them for their efforts which resulted in a considerable reduction in time, cost and complexity.

The works proposed by Mr Sherrard's report would cost between £34-37,000. The works which the Department regarded necessary to produce a 10-15 year life span would cost £70-96,000. Both these bands of figures excluded mechanical and electrical works. The applicant considered a mechanical and electrical expenditure of about £800 would be appropriate, the Department considered £22,760. The parties agreed that it was not appropriate to measure the demolition cost of Building No 1, but the demolition cost of Building No 2 was considered by the applicant to be about £10-15,000 and by the Department to be £35,000.

Planning Assumptions

The Tribunal is restricted to consideration of the uses for which planning permissions are assumed to be available in accordance with the rules and assumptions of the compulsory purchase legislation and cases. Over the years the premises or parts of them had been put to a variety of uses including a snooker club and an amusement arcade. As the acquisition appears to have been with the intention of holding for future development rather than in contemplation of any particular proposals for use, no assumptions as to planning flow from that. In 1979 planning permission was granted for the change of use from entertainment and conference centre to amusement arcade on a seasonal basis. In 1980 full planning permission was granted for the erection of a Ferris wheel for a six month period and in 1987, planning permission was granted for the change of use of part of Building No 1 to a health club.

Availability of Grant

Mr Graham agreed with Mr Dunn that a number of the planning uses may only be viable with the aid of grant assistance. He also accepted that appraisals for such developments could produce a very low or even negative site value. All recently provided major tourist

related attractions in the area had relied on direct public expenditure or grant aided assistance. Examples were the Dunluce Centre, Fantasy Island, and Waterworld. Other developments he considered to be of note were the redevelopment in 1991 of the former Royal Hotel as apartments, the redevelopment of a site at 4/6 Kerr Street as an indoor children's play park and cafe and the current development of the site at 136 Main Street for SHAC.

The Tribunal accepts Mr Graham's view that availability of grant aid was a factor common to all potential developments with commercial or tourist related content in the Portrush area. It was a general factor that the market took into account and was reflected in the working of the price mechanism.

The Role of the Expert Valuers

"[The experts'] duty is to furnish the [Tribunal] with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the [Tribunal] to form its own independent judgment by the application of these criteria to the facts proved in evidence."

Davie v Edinburgh Magistrates [1953] SC 34

"The duties and responsibilities of expert witnesses in civil cases include the following

1. Expert evidence presented to the [Tribunal] should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation (Whitehouse v Jordan, [1981] 1 WLR 246 at p256 per Lord Wilberforce).

2. An expert witness should provide independent assistance to the [Tribunal] by way of objective unbiased opinion in relation to matters within his expertise (see Polivitte Ltd v Commercial Union Assurance Co Plc [1987] 1 Lloyd's Rep 379 at p386 per Mr Justice Garland and Re J [1990] FCR 193 per Mr Justice Cazalet). An expert witness in the [Tribunal] should never assume the role of an advocate.

3. An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (Re J sup).

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more

than a provisional one (Re J sup). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report (Derby & Co Ltd and Others v Weldon and Others. The Times, No 9 1990 per Lord Justice Staughton).

6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the [Tribunal].

7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports."

The Ikarian Reefer (1993) 2 LR 68

"In plain language, litigation in this country is conducted "Cards face up on the table" .... litigation is not a war or even a game. It is designed to do real justice between opposing parties and, if the [Tribunal] does not have *all* the relevant information, it cannot achieve this object."

Davies v Eli Lilly & Co [1987] 1 All ER 801

There is a special duty for property valuation experts in property cases because the opinion expressed is often on the very question for the Tribunal.

Mr Mills vigorously promoted his client's case and in doing so often appeared less than objective. Mr Mills had not been involved in any sales or lettings in Portrush in the last 10 years and his only experience of the local property market was in purchasing a house for his parents in Portballintrae. He did know the area from holiday visits.

Mr Dunn's opinion of value was based on an instinctive approach to the capital value of the whole, which he then analysed to see whether in very general terms the pricings were realistic or not. But, in his written evidence, he did not set out either observations of 'expert fact' which he might consider helpful or his expert inferences as to whether the pricings were realistic or not. So the accuracy of his conclusions could not be tested. He then declined to join the other expert valuers by submitting a report in rebuttal. So, prior to his giving oral evidence at the Hearing, they could not reflect upon the inferences he might draw from their observations or reasons why he might disagree with their inferences.

Whilst there will always be issues on which it is difficult or even impossible to find evidence other than the opinions of experts, whenever possible the expert witnesses must expose the foundations, on which their opinions rely, for examination by the experts for the opposing parties and evaluation by the Tribunal. Failure to do so must affect the weight, if not the admissibility of their evidence.

A Fresh Comparable

Mr Graham had provided the other parties and the Tribunal with particulars of a lease renewal of premises at 64-70 Main Street, "Phils Amusements" with effect from 1st April 1995 and agreed in the late summer of 1994 at a rent of £18,500 per annum. That was an amusement arcade with a ground floor area of just over $800m^2$ and with some first floor and basement accommodation of little value.

The Valuers' Approaches

In Mr Mills' view the Arcadia was situated on a unique site in a major tourist area of the town and was one of Northern Ireland's most famous landmarks. He stressed the importance of situation, he said: "This is a unique site situated situated situated [sic] in a superb position" and relied on the unique nature of the site as the key to the value. Mr Mills considered quite frankly it was impossible to value, the only true method would be to put it on the market and he was confident that he would have investor clients who would be keen to buy at his figure.

Mr Graham accepted that the subject was a landmark site and the older part had some attractive architectural features, the new part was more shed like. He accepted that there was no exact identical site in Northern Ireland and accepted that comparisons were less reliable than they might be in other cases, but considered that whilst it was difficult to fix a value it was possible to at least fix the range.

Mr Dunn considered that, although the word 'unique' featured largely in Mr Mills' evidence, all properties were unique, the comparative method was highly appropriate in the circumstances and was not disbarred. Mr Dunn said his approach was to value on a two step basis, the first was to consider whether the site value exceeded the value for the standing buildings and the second was to look at the standing buildings, estimate a rental value and capitalise that making an adjustment for repairs. Some of Mr Dunn's considerations were more relevant to a letting rather than a sale and so would not be in the mind of a vendor but might be in the mind of a purchaser but only a purchaser contemplating letting.

Drawbacks

Mr Graham considered that the Arcadia suffered from a number of drawbacks mainly:

i. the range of planning uses available was commercially unattractive and had limited potential.
ii. the site was not within the Central Business District.
iii. there was limited vehicular access; only pedestrian access was readily available; vehicular access maybe available across Coleraine Borough Council land.
iv. there was no convenient car parking for the site.
v. the existing building was in a very poor state of repair.
vi. asbestos had been discovered within the building, this would have to be removed under controlled conditions by a licensed operator.
vii. the foul waste system was defective and had been discharging raw sewage unto the rocks behind the Arcadia and into the sea.

The combination of the above factors led Mr Graham to the conclusion that there was a limited market demand for a site at this location. He was referred to the variety of uses set out in the Certificate of Alternative Development and he accepted that these were the type of activity that one would anticipate in Portrush. But he considered the history of the use and occupation of the Arcadia and difficulties experienced from the early 1970's in securing continuing and sustainable use for it supported his view. Apart from a period beginning in the early 1950's when the ballroom was added and ending in the late 1960's, development at this location had been relatively small scale. In Mr Graham's view it was worth noting that ballrooms all over Northern Ireland had suffered a similar decline since the 1960's. Mr Graham accepted that although the site was not in the Central Business District, it was on the limit, and the location was satisfactory for the permitted uses.

Mr Mills disagreed that the range of planning uses available were commercially unattractive and of limited potential. The Certificate of Alternative Development represented absolutely viable uses especially a small hotel and also public bar, restaurant, disco and shops, an extensive range of commercial uses suitable to Portrush.

Access & Parking

Mr Dunn accepted that the uses provided for in the Certificate of Alternative Development would result in large numbers of people visiting the property and the difficulty with vehicle access and distance to public car park facilities were likely to lessen the potential for successful development for any of these uses. But in terms of tourism it was on a level playing field with most of the rest of the town. Portrush generally had parking problems

and visitors would walk a long way so he did not think that the parking difficulties would have a great effect on the commercial use but, for example, he considered it was difficult to envisage a new hotel development without a large provision of on site or adjacent, parking for guests and visitors. With regard to use for a ballroom Mr Dunn was not aware of any new ballroom in Belfast but was quite happy that the potential was there for a disco.

Mr Mills accepted that access could be better but considered it was not a major problem provided the Council was co-operative. He pointed out that in its hey-day in the 1950s and 1960s, 1,200 people used the Arcadia. There was no car park at Barry's, another entertainment and amusement centre in the town. He considered the Arcadia was adequately served by public car parking, it was only two minutes walk from the large East Strand car park.

Mr Graham considered that any development which required on-site car park spaces would be ruled out including hotel and SHAC residential but the SHAC development at Main Street did not have on site car parking and many businesses in the Central Business District had no car parking. Mr Graham accepted that the site had no major disadvantage from a pedestrian point of view. He accepted that there was a car park two minutes walk away and he had to accept that the Arcadia car parking was not terribly different from other attractions, it was apparent that the Arcadia was as convenient to car parking as Barry's Amusements.

The Value for Previous Use

In Mr Dunn's opinion the premises could have been beneficially occupied for its previous use - restaurant/disco/snooker hall and amusements possibly with some element of retail. A potential purchaser would have been able to occupy the whole premises for this use or could have let it as a single unit or in parts. But, in Mr Dunn's view the decline in visitor numbers to Portrush was not likely to encourage entrepreneurs, developers or bankers to invest in speculative developments.

Mr Graham did not agree with Mr Dunn that the property was readily capable of being so used for the following reasons:

a. while the property could seek to compete in this market, the property was in poor repair and he did not accept that it could have been beneficially occupied for any of the previous uses at the relevant date without prohibitive/uneconomic expenditure.
b. the entertainment's licence (for snooker and amusements) had expired in January 1992.

c. there was no amusement licence, the amusement licence expired in December 1991, this was not renewed by Coleraine Borough Council because the premises failed to be granted an Electrical Test Certificate. Mr Graham included a letter from the Borough of Coleraine stating that following a renewal application in December 1991 failure to include a Electrical Test Certificate documentation meant that the application was not completed.
d. there was little or no demand for these uses in this location.
e. the Claimants use of the premises ceased in October 1991.
f. use as a restaurant ceased in 1985.
g. use as a disco ceased in 1985.
h. other better quality "products" in terms of these uses exist within Portrush and the general area.

Value Added by the Buildings

The 1989/90 Offer

Mr Mills' approach was based primarily on the evidence given of what happened when, in 1989/90, the Arcadia was put on the open market for sale. The selling agent was asking £350-400,000 and Mr Mills thought that price had put several potential purchasers off. Mr Mills relied on the offer of £250,000 later increased to £265,000 from Mr Cully who wanted to purchase a licensed arcade. Although the offer had not been accepted that was the best available guide as to value. Allowing for a growth of 3% per annum from the offer 5 years ago would produce a value, at the relevant date of about £350,000. When referred to the history of sales (part had been sold in 1971 at £75,000 and bought back in 1979 at £33,000, part had been sold in 1981 at £52,000 and bought back in 1983 at £25,000) Mr Mills would not say whether that showed a history of decline in value because he did not have sufficient facts.

Mr Dunn considered that if Mr McIntyre had been prepared to accept a lower figure there might be more interest. He considered that the evidence of the Cully offer was of little or no assistance in determining the open market value.

Mr Graham accepted that a market offer might be of some assistance, assuming that it was an informed bidder but he did not find the Cully bid of any assistance. The evidence of the offer received by Mr Butcher was of little or no assistance in determining the value at February 1994.

The Season's Lease

Secondly, Mr Mills relied on a tenancy agreement between Mr McIntyre and Mr Harkin. The ground floor of Building No 2 had been let for a seasons lease, in 1993, at £2,750 per month. Mr Mills said that Mr Dunn had recognised £52pm^2 as an open market rental of the ground floor of Building No 2, that equated that with a rent of £33,000 per annum.

Mr Graham emphasised that the letting of the subject premises was a six month agreement from April 1993 for an indoor market. The market only operated for approximately two months. Mr Graham considered that the property seemed to have been substantially over let in terms of the rent as indicated in the agreement and drew the Tribunal's attention to lettings of other markets which indicated much lower rents. He gave details of lettings of two markets, and considered these to be in a better location for such use than the Arcadia. Both were situated in the centre of a provincial town and used throughout the year.

In Mr Dunn's view, since 1990, Mr McIntyre had concentrated on trying for planning permission for a major residential development and this might have achieved high value. Because of that he rather neglected the former use and also the possibility of letting in parts. Mr Dunn thought that the testing of the short lease market had been inadequate, there was not even a 'To Let' board on the premises.

Mr Dunn took into account the actual letting of part of the subject premises on a six month lease and, although that analysed to approximately £52pm^2, he had adopted a much lower rental as a long term notional rent for the premises. He relied on a letting of part of the subject premises in 1987 as a health club as a further indication of potential for beneficial use of the building.

The Option to Purchase

Thirdly, the 1993 agreement included an option to purchase the entire property at £300,000 and Mr Mills equated that with a value in February 1994 of £315,000. His understanding was that Mr Harkin wanted to get a foot in the door so as to be in a position to negotiate with planners for a small hotel. In his view Mr Harkin had not proceeded because he would not obtain planning permission for an hotel. He accepted that there would be car parking problems if the site were to be redeveloped as an hotel but did not think those would be insurmountable.

Mr Graham considered that the option was of little or no assistance in determining the open market value of the Arcadia in view of the other evidence. He did accept that willing parties

had agreed an option of £300,000 but he did not think an option was of real assistance until it was either exercised or not exercised.

Mr Dunn considered that an option would be at the bottom end of the spectrum of helpfulness.

Comparisons

Mr Mills' approach to valuation was that the Arcadia was unique. By definition therefore, the comparative method of valuation was inappropriate because there was nothing approaching the subject. He had thought about looking at other resorts, but Portrush was always the premiere resort and no other town would provide adequate comparison. Mr Mills considered that none of the other valuers so-called comparables compared to this unique site, they were situated in much inferior locations and would not be nearly as attractive and valuable from a development point of view as the Arcadia. He had investment clients who would be very interested in the property around his valuation and would have been interested in the property when it was on the market if they had known. He disagreed with what Mr McIntyre said at the Planning Appeals Commission and his decision to serve a Purchase Notice.

Mr Mills was not happy to be drawn on the comparison route. Although he had put forward some figures he had done so purely as an exercise and to try to get the point across that it was not the correct approach. He did not consider details of the lease of a substantial modern amusement arcade relevant as a comparison. The rates adopted by Mr Dunn were too low for the ground floor rental value of the Arcadia, being just slightly above the going rate for warehousing and less than light industrial. Mr Mills considered a more realistic approach would give a rent of £35,000 per annum which he would then capitalise at 14% giving a gross value of £353,500. Even if necessary repairs were to be £33,000 the value of the entire property would in theory be £320,500 which would confirm his valuation of £310,000.

In Mr Dunn's research he had found very few useful comparisons, most of the amusement arcades in the town centre were owner occupied. Mr Dunn considered that comparisons were not a great deal of help. It was a landmark building with a photogenic old part. Mr Dunn accepted that "Phils Amusements" was better located in terms of commercial use, it was marginally easier to park at busy times and had uses within the range available for the Arcadia but he considered that the rent represented a floor, Mr Dunn again criticised the Valuation & Lands Agency approach as being mechanistic, but accepted the analysis of "Phils Amusements" which showed a rent of about £2 per square foot. He would not accept that the Arcadia would attract a lower rent because Portrush was an unusual town,

the rent was low and it just levelled down to storage rates. The Arcadia had other attractions which would offset any disadvantages and there was nothing about that deal that would cause him to revise his valuation.

In his written evidence Mr Dunn produced four comparisons, a sale of a site at 58 Main Street, another (the "SHAC site") at 136 Main Street, the sale of an Old Peoples Home (the "Metropole") at 70/72 Eglinton Street and the "Harkin" letting of part of the Arcadia. He considered the first not useful as it represented a maximum site value for retail use and did not analyse the other two sales.

For his valuation he adopted rents for the ground floor of Building No 1 of £1.80 per square foot and the ground floor of Building No 2 of £2.15 per square foot and for the upper floors of both, £1.50 per square foot. On this approach he arrived at a estimated rental value of £33,000 per annum. The yield of 16.66% he adopted was in his view comparable to poorly located secondary commercial properties with older buildings. He arrived at a capital value of £198,000 from which he deducted costs of necessary repairs and decorations of £33,000 to arrive at his valuation of £165,000. He considered that his rental figures would be appropriate to get a tenant on a short lease.

He did not accept that comments Mr McIntyre had made in the Planning Appeals Commission represented a true position just because he made them.

Mr Graham criticised Mr Dunn's evidence of value on a number of grounds. In support of his view that the rental value estimated by Mr Dunn was too high he provided additional information for lettings at major tourist attractions together with Northern Ireland Tourist Board figures on visitors numbers. These indicated Waterworld cafe £2.65 per square foot, Dunluce Centre cafe £3.66 per square foot, Giants Causeway Visitors Centre £3.17 per square foot. It was difficult for Mr Graham to envisage such numbers ever being attracted to the Arcadia. Any potential development in Mr Graham's view was likely to be in keeping with this use and on a relatively small scale. He considered it was likely to produce much lesser rent levels than those achieved at the very popular attractions identified above.

Mr Graham referred to the fresh comparison, "Phils Amusements" which was a comparison in the prime centre of Main Street, the use was similar and it was a good indication of the letting market. The property was in a better location, no drawbacks and indicated the prime end of the market. The analysis he adopted followed the rating formula, and that gave a ground floor overall pricing of £2 per square foot. If the Arcadia was not beyond repair then, relying on this as a direct comparison, he would come up with a rental value which would require to be reduced for disrepair. Taking £30,000 for repairs, then without further adjustment that would produce £123,000. Although Mr Dunn found comfort in his

figures from the transaction of "Phils Amusements", Mr Graham would not accept that those figures could be transported from Main Street to the Arcadia. Main Street was far more attractive and the use was functioning, it was fronting onto a busy street and he considered an adjustment would be required.

Mr Graham thought the pricings and the relationship between the pricings, used by Mr Dunn, for the ground and first floor pricings (ie Ground floor £1.80 and £2.15, First floor £1.50) seemed unrealistically high and both were unsupported by any comparative evidence. He was not aware of any established market in Portrush for accommodation of this size and type at first floor level and could find no evidence to support first floor lettings at this level of value or indeed such a relationship. Mr Graham produced three comparisons in support of his view that Mr Dunn's pricings were unrealistically high:

> The 'SHAC site at Main Street' comparison was a sale of an amusement arcade which was formerly an Electricity Showroom, which building he analysed as equating to £1.70-£2.27 per square foot ground floor. The property had planning permission for redevelopment, and was redeveloped for student housing accommodation and had been purchased for a consideration of £100,000.
>
> An amusement arcade and shop on the ground floor with road frontage to Dunluce Avenue and Hamilton Place had been sold for £40,000 and that he analysed as equating to a range of between 93p and £1.24 per square foot for rental value.
>
> The "Metropole" (to which Mr Dunn referred in his written evidence, but without analysis) of $4^1/_2$ storeys at Eglinton Street, which had been sold to provide student accommodation, at a consideration of £170,000 which he analysed as equating to a rental of between £1.20 and £1.60 per square foot.

In Mr Graham's view these properties did not suffer from the same inherent drawbacks as the Arcadia.

Mr Graham said Mr Dunn had correctly pointed out that although assumed planning uses included the existing use, Bankers would not be interested in supporting the existing use. On balance Mr Graham was drawn back to site value.

Site Value

Mr Dunn attached little weight to the comparisons of site value. The Arcadia was a unique site and it was not appropriate to analyse on the basis of a price per square foot. There was a tremendous spread of values indicated by the comparisons which he explained by

different kinds of development. He was reluctant to analyse site values without specific proposals in mind and he considered a method of analysis on the basis of a price per square foot not appropriate. He did not accept that the SHAC development necessarily would have released the highest value if planning permission had been granted.

Mr Graham had looked at the market in Portrush and identified a number of transactions, from 1990 through to 1995, of sales at site value of sites ranging from 930m^2 to 3,441m^2. On a price per unit area basis these ranged from a small site at 16 Dunluce Avenue at £30.65pm^2 to the "Fantasy Island" site at Kerr Street at £146.66pm^2. Mr Graham said the subject was not easy to value.

Like the subject, 16 Dunluce Avenue, had potential access problems and was situated outside the Portrush Central Business District and to that extent he considered particularly relevant. The remainder of the sites were within the Central Business District had good road access and were generally in more marketable locations with better planning potential. Accordingly they were more attractive/valuable from the development point of view than the Arcadia. He reaffirmed that he considered that the Arcadia represented a development opportunity and its best value was realisable as a site.

Having looked at a number of comparisons he considered the best indicator was the SHAC site at Main Street which he analysed at £83.33pm^2, and he adopted that pricing then making a deduction of 30% for drawbacks affecting the Arcadia site. Planning permission for that site, which Mr McIntyre had sought and could not get for the subject site, suggested that it was more valuable than the Arcadia. It was a prominent site with road frontage front and rear and commercially more attractive than the subject.

In his deduction of 30% for drawbacks affecting the site, he was not able to apportion how much to each. At a broad guess, 30% of the 30% related to three of the matters referred to in his evidence above:

the existing building was in a very poor state of repair,
asbestos had been discovered within the building, this would have to be removed under controlled conditions by a licensed operator, and
the foul waste system was defective and had been discharging raw sewage unto the rocks behind the Arcadia and into the sea.

Mr Graham accepted that the state of repair had a minimal effect on site value. His 30% he accepted was not scientifically arrived at and admitted it was a difficult exercise.

Mr Graham reminded the Tribunal that although Mr McIntyre was pinning his hopes on the SHAC Development the property was on the open market and available to all comers.

The "Fantasy Island" site at Kerr Street, which had planning permission originally for apartments at the time it was purchased in March 1991, was a cleared site bought by a developer who proposed housing but who may have changed his mind following the failure of a new housing development at Royal Court. Although there was the opportunity to develop for residential purposes it proved more attractive for entertainment or tourist related development. A new planning application was guessed to have been made in 1993 and it opened as "Fantasy Island" in June 1994. It had received a Tourist Board grant of £270,000 on an estimated cost of £900,000, and was situated at a busy part of Portrush opposite Barry's Amusements and Traks Disco, overlooking West Bay. Mr Graham accepted that the fact that a commercial developer in 1993 had decided to create "Fantasy Island" on a cleared site would be an indicator of some demand for cleared sites for commercial development. It was a use included in the Certificate of Alternative Development for the Arcadia.

He considered that Mr Dunn's comparison at 58 Main Street was of very limited assistance in arriving at the site value of the subject, it was situated in the main retailing street of Portrush and it was a fraction of the size of the site of the Arcadia site. It had a more beneficial planning use and it was more in the nature of a comparison for a prime retail site and was therefore not directly comparable to the Arcadia site. He considered that his comparisons were more appropriate and of greater assistance.

Mr Graham assumed SHAC was the highest use and his "Fantasy Island" site gave an indication of a site in a popular area of Portrush. He accepted that, if one relied on the "Fantasy Island" site rather than the SHAC site at Main Street, it would produce a substantial difference.

Mr Dunn had given further consideration to the "Fantasy Island" site which was purchased as a development site for an indoor play area. The purchaser was able to out bid residential use and that point was reasonably relevant to the Arcadia. It was an indication that the site value for tourist related amusements could exceed residential site value and, of Mr Graham's site value comparisons, he thought it was the best comparison. He would not accept that it was directly relevant, even though it had got a planning permission which was refused for the subject. If the site value basis were adopted it looked to him as if the value should be nearer to £200,000 than £100,000 relying on the Fantasy Island site at £106,000 rather than the SHAC site at Main Street at £83,000. But, in his view the buildings did add to the value.

Mr Mills concluded that for Mr Graham to base his valuation on the SHAC site at Main Street was entirely unreasonable and that none of his so called comparisons had any relevance to the subject property because of its uniqueness. In his view the market evidence which he had produced for the subject properly confirmed that the valuation at the date of vesting was around £310,000. He apportioned that Building No 1 £210,000, Building No 2 £100,000.

Conclusions

The 1989/90 Offer

The Tribunal derives little assistance from the 1989/90 offer by Mr Cully for the following reasons:

There was only one bidder.

The bid was made in special circumstances because of the difficulties he was having with regard to his business in the Dublin area and there was no evidence to suggest that the same circumstances were present there at the date of vesting.

The Tribunal cannot accept, without supporting evidence, that the value of the Arcadia automatically rose between the 1989/90 offer and the date of vesting. The history of transactions relating to parts of the building showed, at best, values fluctuating up and down.

At the time Mr Cully made his bid there was an operating, licensed Arcade on the premises. At the date of vesting there was no licence and that business use had ceased.

In any event such evidence would seldom be of great assistance because it does not follow that oral offers automatically translate into completed deals.

The Option to Purchase

The Tribunal derives little assistance from the evidence of the option in the Season's Lease, for the following reasons:

The option was not exercised.

The evidence was to the effect that the proposed use for which the option was obtained was not a use which would have been granted planning permission.

The Season's Lease

The Tribunal derives little assistance from the rent agreed for the Season's Lease for the following reasons:

It was leased for the summer season in a town were the trade was likely to have been seasonal and the monthly rent can not properly be grossed up as if it were a yearly rent on a lease for years.

The tenant did not even see out the season's tenancy.

Whether or not, as Mr Graham concluded, the rent was excessive in comparison with other markets, the evidence was to the effect that the market was not a success and could not sustain the rent.

The letting was a testing of the water and, if the test had been successful, the lease might have been renewed or the option exercised but, in the absence of either, the test was clearly unsuccessful. There is however some merit in Mr Dunn's criticism of the extent of the exposure of the property to the market, and the Tribunal accepts that the evidence does, at the very least go some way to suggesting that, from time to time, there was a limited market for parts of the premises to be let on short leases.

Valuable Uses

In arriving at a value it is of course essential that consideration is confined to those uses which may properly be taken into account, and it is the conjunction of those uses with market demand for them which creates the value to be adopted. It is not part of the function of this Tribunal to review, in any sense, the planning Decisions of the Department or the Planning Appeals Commission.

The Tribunal accepts that many business in the Central Business District had no car parking and the site had no major disadvantage from a pedestrian point of view. There was a car park two minutes walk away and the Arcadia car parking was not terribly different from other attractions; it was apparent that the Arcadia was as convenient to car parking as Barry's Amusements.

Mr McIntyre would still see the Arcadia as a viable site given the influx of tourism but the Tribunal is not persuaded there was either an actual or foreseeable influx of tourism at the date of vesting, in February 1994. In Mr Dunn's view there was a decline in visitor numbers to Portrush which was not likely to encourage entrepreneurs, developers or bankers to invest in speculative developments.

Within the various assumed available uses, Mr McIntyre would like to have some water sports, cafeteria, possibly a small licensed restaurant and shops, possibly an hotel. Mr Mills considered that the uses available were commercially viable uses especially a small hotel and also a public bar, restaurant, disco and shops.

In the case of an hotel the Certificate was "subject to the provision of satisfactory parking and servicing arrangements" and Mr Dunn said that it was difficult to envisage a new hotel development without a large provision of on site or adjacent, parking for guests and visitors. Such provision would not have been without its difficulties. Mr Graham considered that any development which required on-site car park spaces, including an hotel, would, in practice, be ruled out. The Tribunal agrees but notes that two of the comparables were former hotel sites.

The Tribunal notes that Mr McIntyre did not suggest a disco or amusement arcade although Mr Dunn agreed with Mr Mills that the potential was there for a disco.

In Mr Dunn's opinion the premises could have been beneficially occupied for its previous use - restaurant/disco/snooker hall and amusements possibly with some element of retail. Mr Graham considered the history of the use and occupation of the Arcadia and difficulties experienced from the early 1970's in securing continuing and sustainable use for it supported his view that the range of uses available was commercially unattractive and had limited potential. Apart from a period beginning in the early 1950's when the ballroom was added and ending in the late 1960's, development at this location had been relatively small scale. On the question of whether the property was readily capable of being successfully used for previous uses, disregarding for the moment the condition of the property, the Tribunal prefers Mr Graham's view to that of Mr Dunn for the reasons he gave.

The Tribunal, taking the picture as a whole, but disregarding for the moment the condition of the property, concludes that the assumed available uses include some viable uses but are more restricted than would be available in the Central Business District and the track record of previous business ventures at the Arcadia would not encourage substantial further speculative investment.

Mr Mills' Views

Mr Mills relied almost exclusively on the 1989/90 Offer and the Option to Purchase, and whilst the Tribunal accepts that the Arcadia has unique features, it does not accept that a properly informed vendor and purchaser would not, or that the Tribunal should not, look at other properties which had been the subject of open market transactions, however much the analysis and the application of the results of those transactions require them to be adjusted to reflect the special circumstances of the Arcadia.

Value Added by the Buildings

In Mr Dunn's evidence he did not set out any supporting analysis for his estimate of rent and capital value. In view of the history of the marketing of the Arcadia, the fresh comparison, the local comparisons and the other rents at much better facilities at tourist attractions which were likely to be much more popular, the Tribunal considers it most unlikely that a prospective purchaser would base his computations on the assumption of immediately obtaining a rent of the order of Mr Dunn's estimate for the entire building.

In particular the Tribunal agrees with Mr Graham that the sort of level of rent achieved for "Phils Amusements" was unlikely to be a safe pricing to be directly applied without adjustment to the much larger Arcadia in its location, state and circumstances at the date of vesting.

Taking an overall view of the evidence, bearing in mind the history of vacancies and little evidence of any strength of demand, and that the only letting actually achieved when the premises were on the market was a season's lease of part of Building No 2 at £2750 per month, the Tribunal concludes that Mr Dunn's pricing is too high and so his estimate of capital value, before deduction for costs of necessary repairs and decorations, of £198,000 is also too high.

The Effect of Condition on Value

Whilst there was vandalism after vesting, the letter to the "Chronicle" published on 16th May 1993, is a clear indication that vandalism was causing problems before vesting.

Mr Mills' complaint that the Department should have carried out a condition report at the date of vesting can hardly be justified when Mr McIntyre refused to give access.

Having carefully considered all the evidence the Tribunal accepts that vandalism coupled with neglect of proper maintenance in the years prior to vesting had had accumulative

results with some deterioration of the structure, fabric and finishes of the building but that no major defect was uncovered. The evidence indicated a property in neglect and in need of major refurbishment but if the work set out in Mr Sherrard's schedules were carried that probably would leave the building weather and water tight in the short to medium term. If the Department carried out the work they considered necessary there would be improvements and many minor items included would be more appropriate to a dilapidations report.

Bearing in mind the assumed uses and the likely demand for them, the Tribunal is inclined towards what appeared to be Mr Dunn's view. He envisaged that the hypothetical purchaser would not be an owner occupier but rather would be an investor contemplating letting, probably in parts. It was not a prime property and incoming tenants would not expect it to be in pristine condition. Before showing people around he would prefer some work to have been done to Building No 1. But generally speaking a purchaser would delay works until leasing incentives had been agreed with future tenants.

In Mr Dunn's view, a purchaser would not have gone to the extent of getting a fully costed out scheme. The Tribunal does not accept, without supporting evidence, and would be surprised if such evidence could be produced, Mr Dunn's approach of equating an allowance for repairs to precisely his estimate of one year's rent. That is not to say that in many instances, in preparing valuations, it is usual to adopt a spot figure and unusual to employ surveyors to arrive at a precise figure. But in this case the works appeared likely to be substantial and both other parties considered it necessary to 'follow the trail'. However, the Tribunal accepts to a large extent Mr Dunn's criticism that the Department's approach was more like a dilapidations report and that a purchaser might use it as a bargaining chip but would not rely on it.

The Tribunal agrees with Mr Graham that if one considered the permitted uses and the standing buildings were to be used, it was difficult to see how these could be carried out without a reasonably good building.

The works proposed by Mr Sherrard's report would cost between £34-37,000. The works which the Department regarded necessary to produce a 10-15 year life span would cost £70-96,000. Both these bands of figures excluded mechanical and electrical works. The applicant considered a mechanical and electrical expenditure of about £800 would be appropriate, the Department considered £22,760.

Whilst the Tribunal accepts that there was vandalism and general deterioration of the fabric of the building between vesting and later inspections, it concludes that the bulk of the defects were present at the date of vesting.

The valuation experts adopted a common approach to the extent that they considered the buildings as a whole rather than an approach based on retaining part. There was no evidence put to the Tribunal that availability of grant aid for refurbishment would affect the adjustment for condition. The availability of grant may be reflected, although not distinguished as such, to some extent in some of the transactions relied upon as comparables.

The Tribunal concludes, from the available evidence that the works and the deduction the hypothetical market would take into account would be between the two experts' figures but closer to that of Mr McIntyre's expert.

The Standing Buildings Value

Having carefully considered valuation evidence that some might regard as little more than an unsupported guesstimate and the understandably almost wholly negative criticism of that, before going any further, the Tribunal makes it clear that it has grave reservations as to the reliability of the conclusions.

The extent of works done by a purchaser, clearly would have some effect on rents which could be achieved and that 'trade-off' would be a consideration in the mind of a properly informed purchaser.

On balance, and bearing in mind its views on the works and the deduction the hypothetical market would take into account, the Tribunal concludes that the evidence supports a Standing Buildings Value of the order of £100,000 to £120,000.

Site Value

On the question of site value, the issue may be approached in two stages, the first being whether the expert evidence of site values, before the Tribunal, illustrated that they could properly be analysed so as to be of use as a pattern of comparisons which could assist the Tribunal to arrive at site value, and the second being the question of whether and, if so where, in relation to that pattern, the Arcadia should be placed.

The Tribunal does not accept that the uniqueness of the Arcadia site is such as to prevent it being valued by comparison with other sites. It may be that it has special attractions which warrant an uplift or disabilities which warrant a deduction, but that does not prevent the method being applied as a primary step.

Mr Dunn's opinion was that a price per unit area was inappropriate and that he would prefer to take into account much more specific details of what was proposed for each site and use something more akin to a residual valuation approach. However Mr Dunn did not attempt to do that, or indeed carry out any analysis of the site value comparisons he quoted. In any event, the availability of grant aid for most development projects and the requirement to take a view of what that aid might be, would render that method very unreliable. The Tribunal agrees with Mr Graham that, on the available evidence in this reference, an approach based on a price per unit area is appropriate.

Having considered the opinions of the experts, and viewed the comparables, the Tribunal accepts the traditional view of the importance of location (which reflects, to an extent, potential uses and demand for them) and concludes that there is an underlying pattern, on a price per unit area basis, to the comparables. The highest value was the "Fantasy Island" site at Kerr Street at £146.66pm^2, a site close to "Barry's Amusements" and "Traks Disco" both major tourist attractions. The SHAC site at Main Street, the offer for the site of the former "Northern Counties" hotel site, and the site of the former "Royal Hotel" at prices between £83.33 and £95.24pm^2 appeared to reflect their less prime location. The site at 16 Dunluce Avenue at £30.65pm^2 appears to reflect its still less attractive location. No doubt there were other factors influencing value but this was one pattern which emerged.

The Tribunal agrees with Mr Graham that Mr Dunn's comparison at 58 Main Street was of very limited assistance in arriving at the site value of the subject, it was situated in the main retailing street of Portrush and it was a fraction of the size of the Arcadia site. It had a more beneficial planning use and it was more in the nature of a comparison for a prime retail site.

Mr Graham considered the best indicator was the SHAC site at Main Street which he analysed at £83.33pm^2, and he adopted that pricing, but making a deduction of 30% for drawbacks affecting the Arcadia site. The Planning permission obtained for the SHAC site, which Mr McIntyre had sought and could not get for the subject site, suggested to Mr Graham that it was more valuable than the Arcadia. It was a prominent site with road frontage front and rear and in his view commercially more attractive than the subject. The Tribunal notes that the permission that Mr McIntyre sought for the Arcadia was more than residential use. For him, one of the jewels in the crown, of the scheme, was the commercial content on the ground floor.

The Tribunal derives assistance from the "Fantasy Island" site at Kerr Street. Although there was the opportunity to develop for residential purposes, it proved more attractive for entertainment or tourist related development and would be an indicator of demand for sites for such development. It was a use included in the Certificate of Alternative Development

for the Arcadia. Of Mr Graham's site value comparisons, Mr Dunn thought it was the best comparison.

If the site value basis were adopted it looked to Mr Dunn as if the value should be nearer to £200,000 than £100,000 relying on the Fantasy Island site at £106,000 rather than the SHAC site at Main Street at £83,000.

From the evidence and its inspection, the Tribunal concludes that the Arcadia site was slightly better in terms of location than the SHAC site at Main Street and although the Arcadia was not far away from Fantasy Island it was clearly not as prime a location. The latter was used for a purpose which could be assumed to be available at the Arcadia site and as it had the option of residential use but chose otherwise, all things being equal, that appeared to be more attractive. The Tribunal concludes that the appropriate pricing should be between the two but much closer to the SHAC site at Main Street. Having come to that view, the Tribunal notes this was not a cleared site, no adjustment was made for demolition, and so it would not be appropriate to make any adjustment for demolition costs at the Arcadia.

The Tribunal considers that, in Mr Graham's deduction for drawbacks affecting the site, which he accepted was not scientifically arrived at and admitted it was a difficult exercise, he took some matters into account which were not relevant to site value and also some other matters which were already reflected in the approach based on comparison with other sites. In the view of the Tribunal the principal relevant drawbacks were those which flowed from the relatively poor access, and those may be offset to some extent by the cachet of ownership of the site of the historically famous Arcadia, but that in turn may be offset by the less than wholly successful track record of businesses on the site. In consequence his allowance of 30% was too much and the Tribunal concludes about 12.5% would be more appropriate.

The Tribunal determines that the value of the site at the relevant date was £135,000.

Conclusion

Having concluded that the site value exceeds the standing buildings value, the Tribunal adopts £135,000 as the open market value.

The Tribunal emphasises that in its appraisal of the relative values of the site and standing buildings, it has been concerned with valuation questions as put to it by the parties, and what a hypothetical purchaser might consider appropriate. It is not, and not intended to be

of guidance as to the future of the Arcadia and, in particular whether parts or all of it should be demolished. Wider issues would be important to that decision.

COSTS

The Tribunal, having given its decision on the substantive issues, heard the parties in the matter of costs. The Department submitted that its costs should be paid by the Claimants. If not, and the Department was to pay any costs of the Claimants, it should be restricted to one set of costs only. Both Mr McIntyre and the Society applied for their costs.

The Tribunal raised the question of whether it should give reasons for its award on costs in light of the view, that it was wise not to do so, expressed by Harman LJ in Hood Investment Company Limited v Marlow Urban District Council 15 P&CR (1963). Bearing in mind the criticisms of that view in Pepys v London Transport Executive [1975] 1 All ER, which considered that reasons should be given when a departure from the usual order was made, and in light of the complexity of the circumstances of this reference, the Tribunal sets out its reasons below.

The sequence of the relevant steps was broadly as follows. The Purchase Notice dispute had been referred to the Tribunal in 1992. The Vesting Order was made on 12th January 1994 and a claim form, which is not a statutory form, was sent by the Department to Mr McIntyre, on 21st February 1994. He completed a Notice of Reference to the Lands Tribunal on 24th February 1994 and that was received by the Tribunal on 28th February 1994. The completed claim form was dated 25th February 1994 and was received by the Department on 21st March 1994, after the Reference to the Lands Tribunal.

The claim from the Alliance & Leicester was dated 8th June 1994. It did not set out an amount for the Claimants interest in the property "as .... this matter is presently pending before the Lands Tribunal and we have not indicated any assessment of compensation monies for this reason".

The expert evidence of the valuers was exchanged on 13th April 1995. In the expert evidence, the battle lines were drawn with the DOE at £100,000, the Alliance & Leicester at £165,000 and Mr McIntyre at £310,000. The Claimants were awarded £135,000 by virtue of the Tribunal's decision.

The Tribunal notes that expert opinions should represent the opinions of the experts and do not necessarily represent the respective negotiating positions of the parties. They should not be equated directly with offers to settle but, where the only dispute is that of a single sum of compensation and that amount is set out in the expert valuation evidence, to

be realistic, the claimant's expert evidence may be taken, at the time it is exchanged, to then represent the amount claimed.

There was no unconditional offer made by the Department, no unconditional offer of readiness to accept any sum made by either Mr McIntyre or the Society, and no Calderbank Offer made by any party.

The first day of the Hearing was 5th May 1995 and it continued on 27th June 1995 and later dates.

A Premature Reference

The first question for the Tribunal was whether Mr McIntyre's Reference to the Lands Tribunal, before any claim was made, was premature and whether in consequence the Claimant should meet the Department's costs.

The Tribunal was referred to Article 3 of the Land Compensation (NI) Order 1982 which reads:

"3. Where by or under any statute ... land is authorised to be acquired compulsorily, -

(a) any question of disputed compensation; and
(b) (not applicable)

shall be referred to and determined by the Lands Tribunal."

The Reference to the Tribunal and the commencement of the preparation of expert reports, which flow from that, generally marks an important change in the role of the valuer in compensation cases. Prior to that, the valuer is often the lead negotiator, using negotiating techniques to do the best possible deal for his client. He may be expected to put his arguments in their best possible light, put forward comparisons of which he knows little apart from skimpy details he has been given by third parties and perhaps not investigate too thoroughly matters which, more likely than not, may weaken his negotiating position. However his role in preparation of his report is, as set out earlier, quite different. His primary duty is no longer to his client but to the Lands Tribunal which is a Court with an appeal only on a point of law. He should meticulously investigate the comparisons or other observations on which he intends to rely, investigate and take into account matters which may not assist his client and carefully consider all inferences which may properly be drawn and present a balanced view. These steps necessarily involve time, effort and expense and the Tribunal considers that, in the interests of possible savings for all concerned, as a

general rule, it is important that proper attempts be made to settle disputes, if possible, before that stage is reached. That requires each party to know the others' positions at an early stage and, as a general rule, before a Reference is lodged.

The Tribunal accepts that the question of whether an application to the Tribunal was premature is a matter which may be taken into account in the question of costs and accepts that technically this dispute may not have crystallised until the Reference was lodged but, particularly in the exceptional circumstances of this case, does not consider that the point is determinative in itself of the question. It would not be appropriate to award costs against Mr McIntyre on these grounds alone. There had been an ongoing dispute or series of disputes relating to the subject property for a number of years, no objection was taken to the validity of the Reference and, the case was always destined to proceed to the Lands Tribunal.

Time to Make a Proper Offer

It was submitted that the Claimants had failed to put the Department on Notice in sufficient time to enable it to make a proper offer to settle and that in those circumstances, unless there were special reasons, the Lands Tribunal was compelled to order the Claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made or after the time, when in the opinion of the Tribunal, the Notice should have been delivered.

The Tribunal was referred to Article 5(1)(b) of the 1982 Order which reads:

"5.-(1) Where either -

(a) (not relevant)
(b) The Lands Tribunal is satisfied that a claimant has failed to deliver to the acquiring authority, in time to enable it to make a proper offer, a notice in writing of the amount claimed by him containing the particulars mentioned in paragraph (2);

(1) The Lands Tribunal **shall**, unless for special reasons it thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made or, as the case may be, after the time when in the opinion of the Lands Tribunal the notice should have been delivered."

(Tribunal's emphasis)

That provision may appear harsh to some, but it was not new by any means and essentially it did no more than only repeat the corresponding provisions which had been in force since the Acquisition of Land (Assessment of Compensation) Act 1919.

It was submitted that if the Tribunal found such a failure on the part of the Claimants then the onus shifted to the Claimants to persuade the Tribunal of special reasons not to award costs against them.

Having regard to the time at which claim forms were completed and submitted, the time at which the experts submitted and exchanged evidence of value, the straightforward nature of the interest in the property to be valued, the single head of claim, the historical circumstances of the dispute and the time which elapsed before the matter was heard, the Tribunal concludes that, in these circumstances, the Claimants had delivered proper notice and particulars of their claim to the acquiring authority, in time to enable it to make a proper offer.

The Tribunal notes that this provision also applies to Compulsory Purchase Orders, which involve the service of a Notice to Treat. But a Notice to Treat may be withdrawn, within fixed time limits, once a Claimant has delivered a Notice of Claim. This gives an added importance to the notice of claim under a Compulsory Purchase Order and different considerations may apply in those circumstances.

Applying the Ordinary Considerations

Having dealt with those matters which relate to the circumstances in which the statutory provisions may displace the ordinary considerations affecting the award of costs, the Tribunal now turns to the latter.

The Tribunal was referred to Re Elgindata Ltd (No 2) [1993] 1 All ER in which principles, which have been approved on more than one occasion, were set out

(i) costs were in the discretion of the Court;
(ii) costs should follow the event except when it appeared to the court that in the circumstances of the case some other order should be made;
(iii) that the general rule did not cease to apply simply because the successful party raised issues or made allegations that failed, but he could be deprived of his costs in whole or in part where he had caused a significant increase in the length of the proceedings, and
(iv) where the successful party raised issues or made allegations improperly or unreasonably the court could not only deprive him of his costs but could also order him

to pay the whole or part of the unsuccessful party's costs. The fourth principle implied, moreover, that a successful party who neither improperly nor unreasonably raised issues or made allegations which failed ought not to be ordered to pay any part of the unsuccessful party's costs.

The Tribunal accepts these to be the underlying principles to be applied in this Reference but their application is complicated by unusual circumstance of the appearances of more than one Claimant.

The Department contended that if costs were payable by it, only one set of Claimant's costs should be paid. The issues were common to both parties and a common approach should have been made.

The Tribunal notes that the Claimants achieved an award which was a substantial improvement, in proportionate and absolute terms, on the Department's expert's opinion. The decision of the Tribunal was flavoured by the cases made out by both Claimants and the Tribunal concludes both the Claimants have been successful.

So far as a co-ordinated approach was concerned, the concern of the Society was that if it had not presented its case, the Tribunal would have had to choose between £310,000 and £100,000. In their view £310,000 was unrealistically high and given the differing views of the two valuation experts instructed by the two Claimants, the Society could not see how the approach could have been co-ordinated.

Not without reservations, the Tribunal, in exercising its discretion, is of the view that it was reasonable in the exceptional circumstances of this Reference for both the Mortgagor and the Mortgagee, who had obtained an Order for possession, to present their cases. Each had a very direct interest in the outcome and was concerned about the case the other would make. As things turned out, there was an absence of difference, if not co-ordination, on significant aspects of the cases presented on behalf of the claimants, eg the expert view of the condition of the buildings and costs of works, and little time was added to the length of the proceedings by the Claimants' expert valuers in criticism of each other's approach.

For these exceptional reasons the Tribunal exercises its discretion in this regard by determining that both claimants may be entitled to their costs, but, for the reasons which are set out below, subject to limitations.

Again with reservations, but taking an overall view of all the circumstances, although notices of claim should have been given earlier and the length of the proceedings may have been extended to some extent by a lack of co-ordination of the Claimants, the

Tribunal concludes that in general terms the costs of both the Claimants' are to be paid by the Department. Whilst the Tribunal did not agree with or accept all of the issues raised or allegations made by the Claimants, the Tribunal did not find that issues were raised or allegations made improperly or unreasonably so as to warrant depriving either of their costs.

The Expert Valuers' Costs

As the Tribunal indicated in its decision on the substantive issues, it was not satisfied that the valuers who gave expert evidence on behalf of the Claimants properly discharged their duties and responsibilities. That is a question that is quite different from whether their views were adopted by the Tribunal. To reflect the shortcomings of the valuation evidence, the Tribunal determines that the Department pay only 25% of Mr Mills' costs, and only 75% of Mr Dunn's costs.

The Purchase Notice

By consent Reference R/19/1992 is withdrawn.

Liberty to apply on the apportionment question.

ORDERS ACCORDINGLY

1st March 1996 and	**Mr M R Curry FRICS FSVA IRRV ACI.Arb**
17th April 1996	**LANDS TRIBUNAL FOR NORTHERN IRELAND**

__Appearances__:

Patrick Good of Counsel instructed by Messrs Tughan & Co, Solicitors, for Philip A McIntyre.

Henry Toner of Counsel instructed by Messrs Francis Hanna & Co, Solicitors, for the Alliance & Leicester Building Society.

Francis O'Reilly of Counsel instructed by R F Cole, Solicitor, for the Department of the Environment.