Neutral Citation [2013] IEHC 170

THE HIGH COURT

No.2012/1024 SS

Between/

COMMISSIONER OF VALUATION

Appellant

-and-

CARLTON HOTEL DUBLIN AIRPORT LIMITED, NETHERCROSS LIMITED T/A ROGANSTOWN GOLF AND COUNTRY CLUB, NEWPARK CARE CENTRE PARTNERSHIP, DUNDAS LIMITED, HUMAR LTD. AND BEECHTREE HEALTHCARE LTD.

Respondents

Judgment of Ms. Justice Iseult O'Malley delivered the 11 April. 2013

Introduction

1. This is an appeal by way of case stated relating to six decisions of the Valuation Tribunal ("the Tribunal"). The appellant is the Commissioner of Valuation ("the Commissioner"). The respondents are business entities, each of which carries on business in the rating area of Fingal County Council. Each of them had appealed to the Tribunal against a determination by the Commissioner in relation to the value of their properties and had succeeded in persuading the Tribunal to amend such determination.

2. The first and second named respondents are in the hotel business and they have appeared and contested this appeal. The remaining four run nursing homes. They have decided not to participate in these proceedings and will abide the outcome.

3. At issue are certain provisions of Parts 5, 6 and 7 of the Valuation Act, 2001.

4. The Act, which came into force on the 2nd May, 2002 and which repeals all pre existing legislation governing valuation for the purposes of rating, provides for the revaluation of every property in every rating authority in the country, the first such exercise since the 1850s. The process involves a valuation by an officer of the Commissioner of Valuation with an appeal to the Commissioner (in practice, a properly delegated officer of the Commissioner) and thence to the Tribunal.

5. The case stated raises questions as to the proper interpretation of the Act in relation to the criteria to be applied by the Commissioner and the Tribunal in the consideration of appeals against valuations. In essence, the Commissioner contends that both he and the Tribunal are bound to determine appeals in such cases by reference to the value of other, comparable properties in the valuation list- the application of the concept known as "the tone of the list". In its decisions in these cases the Tribunal proceeded on the basis that it was entitled to have regard to other evidence relating to matters such as profitability and competition in the area and to apply a different methodology to that employed by the Valuation Office.

6. The question posed in the case stated by the Chairperson of the Tribunal is

> *Did the Valuation Tribunal err in law by disregarding and/or failing to have regard to values stated in the Valuation List in which the properties concerned appeared of other comparable properties in its determinations of the instant appeals, as provided for by Section 31(a)(ii) of the Valuation Act, 2001 and having regard to, inter alia, the provisions of Sections 30, 33, 34 and 35 of the Valuation Act, 2001 and the effects thereof?*

7. There is an argument, discussed below, as to whether this is a question that properly arises from the proceedings and determination of the Tribunal in these cases.

Legislative back round - valuation

8. The Act in its short title is expressed to be {(an Act to revise the law relating to the valuation of properties for the purposes of the making of rates in relation to them; to make new provisions in relation to the categories of properties in respect of which rates may not be made and to provide for related matters". As already noted, it repeals all previous legislation in relation to valuations.

9. "Valuation" in this context includes "revaluation" where a property was previously valued, whether under this Act or earlier legislation.

10. Section 13 directs the Commissioner to provide for the determination of the value of all relevant properties in the State. (The definition of "relevant properties" is not of concern in this case.)This is, obviously, a huge undertaking. It is a noteworthy feature that the valuation exercise is to be carried out in each rating authority area every five to ten years.

11. Pending the completion of the exercise in any given area, existing lists of valuations made under earlier legislation continue in force.

12. Pursuant to Part 5 of the Act, the process, in so far as it is relevant to the issues in the case, is as follows. The Commissioner makes a valuation order in respect of a particular rating authority area and appoints an officer to organise and secure the valuation of all relevant properties in that area. That officer is referred to as a "valuation manager". The valuation order specifies the date by reference to which the properties are to be valued. It also specifies the date on which it is proposed to publish the list of all the relevant properties and their values -the valuation list.

13. The valuation manager is to issue a draft certificate of value to each occupier at least three months before the proposed date of publication of the valuation list. The occupier then has 28 days to make representations in respect of dissatisfaction with any material particular stated in the certificate. The valuation manager may amend the certificate in the light of such representations.

14. On a date no later than seven days before the proposed publication date of the valuation list, the valuation manager is to issue

the valuation certificate to the occupier.

15. Section 48 is the key section relating to the basis for valuation and is set out here in full.

> *48--(1) The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.*
>
> *(2) Subsection (1) is without prejudice to section 49.*
>
> *(3) Subject to section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.*

16. The net annual value is hereafter referred to as "the NAV".

17. It should be noted that NAV as defined in the Act is different to that under the Valuation Act, 1852, which defined it by reference to agricultural prices. This is a very significant change and one which requires the valuation process to focus on the reality of modern commercial life. It is therefore necessary to use new methodologies for the purposes of the new Act.

18. The Act does not prescribe any particular method for assessing the NAV and hence the value of a property. The only stipulation in that regard is contained in s. 50, which refers to the method known as "the contractor's basis" (which involves taking a percentage of the capital cost) and provides that where that method is used a particular formula or calculation is to be followed.

19. However, ss. 45 and 46 empower the Commissioner and/or his or her officers to gather such information from owners and occupiers of rateable properties as is considered necessary for the performance of their functions. These provisions are utilised to obtain market information relevant to rent levels in the area.

Legislative background - revision

20. Under ss. 27 and 28, the Commissioner may, either of his own volition or on the application of a rating authority, or of a person who is the occupier of or has an interest in the property in question, or of a person who is the occupier of a property on the same valuation list, appoint a revision officer. It is the task of the revision officer to determine whether there has been a material change of circumstance in relation to the property since the last valuation in the rating area (or indeed since the last revision carried out under this power).

21. There are two possible scenarios dealt with in the section. One is where the property was on the valuation list and the question is whether, because of a material change, it should remain on the list or should have its value amended. If there has been such a change, the revision officer may, as appropriate, amend the valuation of the property; amend any other material particular or exclude it from the valuation list entirely(s. 28(4)(a)). This, presumably, deals with situations such as destruction or serious damage, or the radical alteration or change of use of a property.

22. If, on the other hand, the property under consideration was not on the valuation list but is relevant property within the meaning of the Act, the revision officer is to carry out a valuation and include the property in the list (s. 28(4)(b)). This might include situations where the property was constructed after the compilation of the valuation list.

23. If the value of the property has to be determined in either of these situations, the basis of valuation is governed by s. 49 rather than s.48. Section 49 provides for the determination to be made

> *" ...by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property."*

24. However, if there are no comparable properties in the area the value is to be the NAV calculated in accordance with s.48(1) but as if, in so far as it is possible, the calculation was done at the same time as the rest of the list.

25. Separate considerations apply where there are no comparable properties and the list in force is one made under a repealed enactment.

26. It is apparent from the foregoing that where a valuation is carried out, the Act requires the determination of the NAV of the property. In the absence of agreement between the occupier and the Valuation Office or a successful appeal, the value so determined will stand until either the next valuation in the area or a material change in circumstances justifying a revision.

27. A revision, on the other hand, is an exercise carried out where circumstances necessitate it. Rather than a full assessment of the NAV, it is based where possible on the examination of comparable properties in the area- the "tone of the list". This distinction could be viewed in one of two ways - a revision is done on the basis of comparisons because it is an interim measure only and any unfairness in relation to the NAV can be sorted out at the next valuation; or it is because the tone of the list was settled with the last valuation and the equitable way to deal with the matter is, so to speak, to "slot" the property into the list.

28. The court has been told that the majority of appeals dealt with by the Tribunal to date have been in relation to revisions and that valuation appeals under the 2001 Act are a relatively new experience for it.

Appeal provisions

29. Appeals against determinations of value under ss. 19 and 28, that is to say valuations and revisions, are provided for in Part 7 of the Act. Section 30 sets out the categories of persons entitled to appeal - the occupier of the property in question, any other occupier of relevant property in the same rating area, the rating authority and any person holding an interest in the property. The matters that can be the subject of an appeal are listed as follows:

> *(i) the determination under section 19 or 28 of the value of the property,*
>
> *(ii) any other detail stated in the relevant valuation list in relation to the property, (iii) any decision by the valuation manager, revision officer or other officer of the Commissioner concerned to include or not to include the property in the*

relevant valuation list or to exclude the property from that list,

(iv)in the case of a decision by the revision officer concerned to so exclude the property, any detail stated in the notice concerned ...

(v) any decision by the revision officer concerned that the circumstances referred to in section 28(4) [i.e. a material change of circumstances] do not exist for the exercise of the powers in relation to the property.

30. Section 31 is the provision giving rise to much of the argument in the case. In full it reads as follows:

An appeal made under section 30 shall, as appropriate-

(a) specify-

(i) the grounds on which the appellant considers that the value of the property, the subject of the appeal (in this section referred to as "the property concerned') being the value as determined under section 19 or 28, is incorrect, and

(ii) by reference to values stated in the valuation list in which the property concerned appears of other comparable properties, what the appellant considers ought to have been determined as the property's value,

(b) specify the grounds on which the appellant considers any detail in relation to the property concerned (other than the property's value) as stated in the valuation certificate or notice is incorrect,

(c) specify the grounds on which the appellant considers that the property concerned ought or ought not to have been included in, or, as the case may be, to have been excluded from, the relevant valuation list and, in case the appellant considers the property concerned ought to have been so included, what he or she considers ought to be determined as the property's value.

31. Pursuant to s. 33(2) the Commissioner shall consider the appeal and may, as he or she thinks appropriate-

(a) disallow the appeal, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate-

(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the relevant valuation and, accordingly, issue a new valuation certificate...

(ii) decide that the property, the subject of the appeal, ought to be included in, or as the case may be, ought to be excluded from, the relevant valuation list and-

(I) in the case of a decision that the property ought to be so included-

(A) determine the value of the property, and

(B) issue a valuation certificate in relation to the property...,

(II) ....

(iii) amend any detail in relation to the property, the subject of the appeal....

32. For the avoidance of doubt it is expressly provided that the powers under (b) are exercisable in the case of an appeal against a decision of a revision officer that no material change of circumstances has taken place.

33. Section 34 creates a right of appeal to the Tribunal, which may be exercised by any of the persons referred to in s. 30, whether or not such person had brought the original appeal to the Commissioner.

34. Section 35 provides that an appeal made under s. 34 shall, as appropriate-

(a) specify-

(i) the grounds on which the appellant considers that the value of the property...being the value as determined or confirmed by the Commissioner under section 33, is incorrect, and

(ii) the value the appellant considers the Commissioner ought to have determined under section 33 as being the value of the property concerned,

(b) specify the grounds on which the appellant considers any detail in relation to the property concerned (other than the property's value) as stated in the valuation certificate...is incorrect,

(c) specify the grounds on which the appellant considers that the property concerned ought to have been included in, or, as the case may be, ought to have been excluded from, the relevant valuation list by the Commissioner under section 33(2), and, in case the appellant considers the property concerned ought to have been so included, what he or she considers ought to be determined as the property's value.

35. Under s.37(1) the Tribunal may, as it thinks appropriate-

(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, or

(b) allow the appeal, and, accordingly, do whichever of the following is appropriate-

(i) amend the value of, or any other detail in relation to, the property...

(ii) decide that the property, the subject of the appeal, ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and, in the case of a decision that the property ought to be so included, determine the value of the property,

(iii) amend any detail in relation to the property...

36. Where a decision of the Tribunal or, as the case may be, the High Court or Supreme Court, so requires, the Commissioner is to amend the list or issue a new certificate of value to the occupier (s. 38). If this occurs, the Commissioner may also amend, in a manner consonant with the decision, the list for that or any other rating area in relation to any property that he considers to be similarly circumstanced (s. 40) and issue new certificates accordingly.

The cases under appeal
37. The valuation of properties in the Fingal County Council area began on the 15th March, 2007 upon the making of a valuation order by the Commissioner. The six respondents in due course received and appealed against the certificates of value relating to their properties.

38. In the case of the two hotels the appeal was put forward by the occupiers to the Commissioner on the basis that the value as determined was excessive and inequitable.

39. Notice of appeal was lodged to the Valuation Tribunal on 25th August 2010 and the Tribunal hearings took place in February, 2011. At the hearings a number of arguments were put forward by counsel as to the appropriate method that should have been used in the revaluation process.

40. It should be noted that the case stated draws on various elements of the six appeals. I do not propose to set out the details of the six cases but rather attempt to give a fair representation of the Tribunal's approach.

41. Mr Dodd (representing the Commissioner) relied on the decision of *Roadstone Ltd v Commissioner of Valuation* [1961] IR 239 as showing that the Tribunal, in determining the NAV of a property, "is not bound to use any particular method of valuation but may come to its determination in whatever way is most suitable to produce the required result." Mr Dodd stated that the task for the Valuation Tribunal may not be to determine which is the appropriate method of valuation but to consider all methods and not necessarily to choose from competing methods. He added that the Commissioner did not consider the Receipts and Expenditure ("R&E") method relied upon by the appellants to be either appropriate or accurate. The value as put forward by the Commissioner was based on the so-called "shortened" method.

42. In response to Mr Dodd's submission, Mr Hickey (representing the appellants) submitted that Mr Dodd was placing an over-reliance on English rating statutes and case law contained in the various sections in Ryde on Rating opened to the Tribunal. The only relevant statute in the appeal was the Valuation Act 2001and it was section 48 of this Act that set down the statutory basis for determining the NAV of the property concerned. Under the Act and Irish case law, the valuation of the property concerned is to be determined using whichever method was the "most suitable to produce the required result."

43. With regards to the R & E method of valuation, Mr Hickey submitted that it was the most appropriate manner in which to carry out the valuation task to hand pursuant to section 48 of the Valuation Act 2001. Due to the substantial dearth of rental information available on hotels in Dublin, the appellant accordingly placed reliance on the R & E method with reference to the actual accounts provided.

44. It was highlighted to the Tribunal over the course of the hearings that the R & E method had been approved by the Valuation Office and the Irish Hotels Federation at a meeting on 11th January, 2007 and subsequently at a symposium jointly organised by the Society of Chartered Surveyors (SCS) and the Irish Auctioneers and Valuers Institute (IAVI) dated 23rd September 2008. Much reference was also made to the Valuation Office Revaluation Practice Note, *The Receipts and Expenditure Method of Valuation for Non-Domestic Rating* (also known as the Royal Institute of Chartered Surveyors Guidance Note).

45. The Tribunal referred to the difficulties encountered by the Commissioner in gathering appropriate information from other similar businesses in the area, (despite his powers of compulsion under the Act).

46. The Tribunal also noted the comparative evidence offered by the Commissioner but was clearly not persuaded that it was decisive.

47. The Tribunal came to the conclusion that despite the difficulties encountered in using the R&E method, it nonetheless provides a reliable basis for determining NAV in accordance with section 48 of the Act, particularly when applied by valuers who have the necessary experience in, and understanding of the particular industries. In coming to this conclusion the Tribunal acknowledged the efforts and length to which the Valuation Office went in order to devise a scheme of valuation which would find widespread acceptance by all involved.

The appellant's submissions on the case stated
48. The Commissioner says that in determining the NAV of the properties by the application of the Receipts and Expenditure method the Tribunal did not determine whether the Commissioner's decision was correct or not; did not determine the appeal by reference to comparable properties on the valuation list and disregarded the valuation methods used by the appeal manager. In so acting it misconstrued its appellate jurisdiction. He says that the Tribunal is mistakenly considering appeals in relation to the revaluations required by the 2001 Act as *de novo* hearings and is hearing evidence as to what the NAV should be when its jurisdiction is, as a matter of statutory interpretation, confined to the question whether the Commissioner correctly compared the property to others on the list.

49. It is contended that the Commissioner himself is not empowered to reassess the NAVin an appeal but is limited to assessment of the value by reference to comparable properties on the list. It follows therefrom that the Tribunal, in considering whether the

Commissioner determined the value correctly, must be subject to the same constraints. The Tribunal should not, it is said, determine a value - it should determine an appeal against the Commissioner's disallowing or allowing an appeal. It is specifically argued, therefore, that the methodology utilised by the valuation officer is not something that can be attacked on appeal.

50. The submissions made on behalf of the Commissioner are, according to counsel, premised on the view that the primary consideration in valuation is to establish uniformity and equity as between ratepayers and that the use of the list is the best method of achieving that. It is expressly contended that the objective of the Act is not to establish the NAVas such but to establish the value of the property in question relative to other properties. The NAVis part of this process and not the end.

51. It is argued that to permit changes to the valuation list after publication, other than on a comparative basis, would introduce anomalies into the system and create unfairness from the point of view of ratepayers who did not appeal.

52. As part of the fairness and equity argument, it is pointed out that a very wide range of persons and bodies are entitled to participate in the appeal process. If ratepayers wish to appeal the determination in respect of a competitor's business, for example, for the most part they will not have access to the type of information needed to mount an argument based on the R&E method.

53. Concern is also expressed by the Commissioner at the possibility that different methodologies could be adopted at different stages, leading to anomalous determinations.

54. The Commissioner makes the following arguments by reference to particular provisions in the Act:

- In lodging an appeal pursuant to s. 31, the appellant is required, firstly, to specify the grounds upon which he or she considers the value of the property as assessed under s. 19 or s. 28 to be incorrect, and secondly to specify what he or she considers, by reference to the values of other comparable properties in the list, ought to have been determined as the property's value. It follows that the latter aspect must be material to the Commissioners decision.

- Although s. 35 (concerning the making of appeals from the Commissioner to the Tribunal) requires the appellant to specify only the grounds on which he or she considers that the value as determined by the Commissioner is incorrect (and what he or she considers to be the correct value) without any reference in the section to comparable properties on the list, the issue before the Tribunal is "what the Commissioner ought to have determined under s. 33" and therefore the list is as material to the Tribunal's decision as it was to the Commissioner's. An appellate body cannot, it is said, have a wider jurisdiction than the original decision maker.

- The provisions of ss. 48 and 49 (dealing with the basis for determining the value of a property) are directed to the role of the Valuation Manager and not to the Tribunal. The only situation in which the Tribunal is authorised to determine value for itself is when it decides, under s. 37, that a property which was not included in the list should be included. In that situation, it is pointed out, there will not have been a previous determination of value by either the Valuation Manager or the Commissioner.

- The now-repealed Valuation (Ireland) Act, 1852 provided (in s.2O) that a person aggrieved by "any cause whatsoever" in relation to a valuation could complain to the Commissioner who was then empowered to investigate and to amend the valuation. That Act made no reference to comparisons with other properties. It must be concluded, therefore, that the Oireachtas intended to bring about changes in the appeal procedure.

- Comparisons are made with the provisions applicable to "global valuations"- these relate to the public utilities- where an appellant may raise any matter that seems to it to be appropriate.

The respondents' submissions

55. The respondents are critical of what they see as inconsistencies in the approach of the Commissioner. It is pointed out that at the hearing of these cases before the Tribunal, the Commissioner's position was limited to the proposition that the Tribunal should "have at least some regard to values" (para. 48 of the determination). The argument was not made at that stage that the appeal was not a de novo hearing or that the Tribunal's jurisdiction was limited in the manner now contended for.

56. In contrast to the Commissioner's argument that uniformity is at the heart of the valuation process, the respondents contend that one objective of the Act, in repealing all previous legislation, was to get rid of the concept of uniformity and with it the anomalies that had developed in the system. Section 48 establishes the NAVas the central concept, and if the NAVis determined accurately for each property then comparisons should be irrelevant. It is submitted that the applicable range of the tone of the list is now clearly confined to revision cases and that the Tribunal is therefore under no duty to consider it in valuation appeals. In the alternative, it is submitted that if there is such a duty, the Tribunal did in fact fulfil it.

57. It is argued that the previous position given to the tone of the list forced valuers into a narrow approach of looking only at neighbouring comparators, while under s. 48 the valuation manager is at large in seeking relevant market information to make the assessment. It is irrational to suggest that this information, and the use made of it, cannot be considered on appeal. To introduce the tone of the list back in at this stage runs the risk of giving rise to unfair anomalies.

58. In response to the submission that amendment of the value of a property after publication of the list could be unfair to those who did not appeal, reference is made to the provisions of s. 40 (outlined in para. 36 above) which enables the Commissioner to act to remove any unfairness by amending the values of other properties.

59. With reference to the requirement ins. 31 to specify, by reference to other properties on the list, the value that the appellant considers should have been determined, counsel says that this is merely a procedural matter.

Conclusions

60. It seems to me that both sides are in error to the extent that they are each seeing one part of the picture.

61. The Commissioner is certainly correct in saying that uniformity and equity are essential to the administration of the rating system, as they are in relation to any tax. Like must be treated alike. However, there is a logically prior issue and that is whether liability to the tax in question has been properly assessed in the first place. There is no merit in the uniform application of a mistake.

62. The first task, therefore, is to determine the NAV of the property. The NAV, being related to rental value, is not necessarily a simple matter to assess. This is so particularly in the case of the sort of property that rarely comes on the rental market and the instant cases -hotels and nursing homes- are examples of that. It is obvious from the determinations of the Tribunal that different methodologies can give significantly different results. It is equally obvious that the Tribunal members were unhappy with the methodology adopted by the valuation officer in these particular cases. I note that similar unhappiness had been expressed in other cases before the Tribunal, as in Highview Inns (25th February, 2011, VA10/5/079) and *Carlton Hotel (Dublin Airport) Ltd* (11th December, 2007, VA07/3/026). From the rider to their decision requesting that the valuation officers consult more with practitioners acting for private clients it appears that they consider that a greater exchange of information and ideas might be helpful.

63. The Commissioner says that the Tribunal cannot go into these matters, on the basis that he himself cannot. He relies heavily on s. 31(a)(ii) for this interpretation, to the extent that, in my view, he has disregarded s. 31(a)(i). If the only matter that he is entitled to examine is whether the value ascribed to the property in question is in line with others on the list, there would be no point in the appellant specifying the grounds upon which he or she thinks the value is incorrect. I consider that the jurisdiction is not in fact dissimilar to that under the 1852 Act- an appellant may appeal on any appropriate ground.

64. The Act establishes what may be an unusually extensive appeal system. If what is potentially the most important decision to be made by the valuation officer- which methodology to adopt for the type of property concerned - cannot be reviewed at any other level it would leave an aggrieved occupier without remedy even where, objectively speaking, the valuation method is simply wrong. Given the scale of the task involved in implementing the new Act and the potential for mistakes to be made, I think that if that was what the legislature intended it would have said so clearly.

65. I do not accept the submission that to permit appeals to proceed on this basis would be unfair to occupiers who do not appeal. In my view this situation is clearly envisaged by s. 40, which empowers the Commissioner to take the appropriate action where necessary to avoid that very problem.

66. Conversely, the respondents have concentrated on s. 31(a)(i) to the exclusion of s. 31(a)(ii). I cannot accept that a requirement to make a substantive, evidence-based submission in relation to values on the list should be regarded as purely procedural. In terms of statutory interpretation, that would be an absurdity. I do accept, therefore, that it is material to which the Commissioner must have regard.

67. I also cannot accept the contention that under the Act, uniformity and the tone of the list have no role. It would, again, render the terms of s. 31 an absurdity.

68. The argument that, if the determination of the NAVis done correctly, comparisons should be irrelevant is an attractive one but seems to me to give insufficient respect to the reality of what is being done. Firstly, any exercise based on the establishment of rental value, whether real or hypothetical, has to involve information about the rental market which in turn is going to involve comparisons with other properties in the market. Relative worth is an important consideration. Secondly, the fact, if established, that other occupiers and their professional advisers have accepted or agreed a certain level of assessment is always going to carry weight in deciding whether assessments in that line of business are being done correctly. In this regard I endorse the analysis of the Tribunal in the *Marks & Spencers (Ireland)* case (9th April, 2009, VA08/5/125). In that case the Tribunal was dealing with a revision but I consider that the following remarks are nonetheless of assistance. In setting out its views on the principles to be applied to a revaluation under section 19 and subsequent revisions under sections 27 and 28, the Tribunal said: -

> *"On the day a new Valuation List is published a preliminary "tone of the list" is originated, but little weight, if any, can, for comparison purposes, be attached to any of the assessments contained therein as they are as yet unchallenged. After the 40 day appeal period, as provided for under section 30, the situation changes somewhat, in that there is then in the list a substantial number of entries whose assessments have been accepted (or perhaps in some instances agreed at the representation stage under section 29) or otherwise unchallenged.*
>
> *At the time of an appeal to the Tribunal under section 34 the situation will have moved on significantly, in that by far the greater percentage of entries in the list would have been accepted, agreed or determined at section 30 appeal stage and hence representative of an as yet emerging tone of the list. When an individual appeal comes before this Tribunal for determination the Tribunal must consider and evaluate the evidence then put before it, be it the actual rent of the property concerned, the rents of other properties of a size, use and location similar to the property concerned and last, but by no means least, the assessment of properties which are truly comparable in all respects to the property concerned and which are currently in the Valuation List and attach such weight to this evidence as is considered appropriate."*

69. It is accepted by counsel for the Commissioner that the arguments put forward on his behalf are not the same as those advanced in the original hearing before the Tribunal. Apart from the question of methodology, counsel for the Commissioner has argued that the Tribunal erred in treating the appeals as *de novo* hearings. That is what they have always been and I see nothing in the Act to alter that understanding. If my analysis of the provisions relating to appeals is correct, then both the Commissioner and the Tribunal should consider grounds of appeal relating to valuation methods and comparisons as they arise.

70. The appellants have been strongly critical of this approach and have argued (as mentioned in paragraph 7 above) that the question of law certified does not really arise. I have some sympathy with this view but in view of the importance of the issue I felt it was better to proceed with the case.

71. I think that there is scope for this problem to recur in cases stated from the tribunal because the Act requires them to be signed by the chairperson, who may not necessarily have sat on the division that made the decision. It would perhaps be helpful if the draft case stated was circulated first to the members of the relevant division. It may otherwise be considered unfair to accuse them of falling into an error that was not identified as such at the hearing. The division which dealt with these appeals may not feel that it is accurate to say that they either "disregarded" or "failed to have regard to" the question of comparative values.

72. In these circumstances I do not feel that it is appropriate to answer a question phrased in terms of "error." The Tribunal, in my view, approached these cases properly in the light of the evidence and submissions put before it. It considered, in particular, the evidence in relation to the competing methodologies and adopted a method that it felt was best suited to the properties in question. It is not for this court to question the expertise of the Tribunal in that regard and I consider that it was an exercise that it was entitled to carry out. I therefore propose to answer the question by saying that the Commissioner and, on appeal, the Tribunal are obliged to consider the matters referred to in s. 31of the Act.