THE COURT OF APPEAL
CIVIL

Haughton J.
Power J.
Murray J.

NEUTRAL CITATION NUMBER: [2020] IECA 33

APPEAL NO. 2019/52

IN THE MATTER OF SECTION 39 OF THE VALUATION ACT 2001
AND IN THE MATTER OF THE VALUATION OF PROPERTY NUMBER 788635
CAR PARK AT 47-53 CLARENDON STREET COUNTY BOROUGH OF DUBLIN
APPEAL NO. VA14/5/387)

BETWEEN:

STANBERRY INVESTMENTS LIMITED

RESPONDENT

AND

COMMISSIONER OF VALUATION

APPELLANT

JUDGMENT of Mr. Justice Murray delivered on the 26th day of February 2020

THE ISSUES

1. This appeal is from a Judgment and Order of the High Court (O'Regan J.) of 8th November, 2018 and 18th January 2019, respectively. The proceedings arise from a case stated of the Valuation Tribunal ('the Tribunal') to the High Court of 2nd June, 2017, as subsequently amended. That case stated was made pursuant to the provisions of s. 39 of the Valuation Act 2001 ('the Act'). To avoid confusion between the parties having regard to their role in the proceedings before the Tribunal, the High Court and this Court, I shall refer to the appellant in this appeal as 'the Commissioner', and the respondent as 'Stanberry'.

2. Stanberry is the owner of a car park at Clarendon Street Dublin ('the subject property'). The car park is located on the south side of the city centre behind the department store 'Brown Thomas'. Although the car park and Brown Thomas are in different ownership, the subject property is widely referred to as the 'Brown Thomas car park'.

3. The appeal arises from an order made by the Commissioner under s. 19 of the Act for the revaluation of all commercial properties in the Dublin City Council rateable valuation area. The valuation was to be ascertained as of 7th April, 2011. The subject property was valued accordingly. The valuation process comprised a proposed valuation certificate issued on 11th January, 2013 with an assessment of €1,235,000.00, a reduction of that following representations to €1,140,000.00 (16th December, 2013), an appeal to the

Commissioner and revaluation by him (6th August, 2014), and an appeal from that decision by Stanberry to, and hearing before, the Tribunal (3rd September, 2014 and 15th and 16th December 2015, respectively). The valuation as appealed to the Tribunal was €1,140,00.00 representing a rate per car parking space of €3,000.00. The valuation fixed by the Tribunal in its decision of April 1st, 2016 reduced this by €250.00 per space, leading to a rateable valuation of the subject property of €1,045,000.00.

4. The Case Stated followed from that determination. It identified five questions arising from the decision of the Tribunal. In the High Court, three of these questions were resolved in favour of the Commissioner, and one in favour of Stanberry. One question (which in turn arose from a number of different alleged errors of fact) was resolved partly in favour of the Commissioner, and partly in favour of Stanberry. The questions resolved in favour of the Commissioner related to the acceptance by the Tribunal of comparisons close to the subject premises, to the alleged failure of the Tribunal to take proper account of un-appealed or agreed valuations of car parks in the north city, and the Tribunal's use of a particular method of valuation – the comparison method – as the basis for its valuation.

5. The single question arising from a number of different alleged errors of fact was resolved in favour of the Commissioner save and insofar as it related to an admitted error in the description of a car park adjacent to a department store on the north side of the city centre – Arnott's – which was relied upon by Stanberry as a comparator property. I will refer to this property throughout as 'the Arnott's car park'.

6. Having resolved the questions in this way, the High Court ordered that the matter be remitted to the Tribunal for re-hearing before a different division of the Tribunal.

7. It is the questions resolved against the Commissioner that form the subject of this appeal. Those two questions were framed by the Tribunal in the Case Stated, as follows:

    (1) If the appellant is correct that the determination was based on an error of fact, did the Tribunal fail to comply with s. 48(1) of the 2001 Act or arrive at the determination which was vitiated by significant errors of fact and thereby erred in law in doing so?

    (2) Did the Tribunal err in law in identifying the Setanta car park and Trinity Street car park as establishing the *emerging tone of the list* in circumstances where the valuation in respect of each such car park was under appeal?

8. The High Court Judge proposed that these two questions be answered as follows:

    (1) The determination of the Tribunal was based on an error of fact relevant to the Arnott's street (*sic*) car park and thereby erred in law in doing so.

    (2) The Tribunal erred in law in having regard to or placing weight on the *emerging tone of the list* attributable to Setanta and Trinity Street car parks which were then under appeal.

THE PROCEEDINGS BEFORE THE TRIBUNAL

9. That the Tribunal recorded in its decision an error of fact in relation to Arnott's car park is not disputed. This appeal thus presents two issues. The first is whether an error of material fact such as to justify the intervention of the Court is presented by an incorrect statement in the decision to the effect that the Arnott's car park had contract parking. The second is whether the Tribunal erred in having regard in the course of that decision to the *emerging tone of the list* attributable to other properties which were then the subject of an appeal.

10. Section 48(1) of the Act makes it clear that the net annual value – 'NAV' – is an *estimate*. The NAV is defined in s. 48(3) by reference to a hypothesis, the object of which is to determine the rent a hypothetical tenant would bid for the property in issue:

> *"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."*

11. The actual rent paid by a tenant for a specific property may be material in reaching this estimate, but it is not itself conclusive of the NAV. The estimate of value is what a hypothetical tenant would pay by way of rent and not, for the purposes of the test framed by the provision, necessarily what any particular tenant is paying. There are different methods of valuation designed to assist in determining the NAV thus defined. The method applied to any particular property is a matter of valuation judgment, dependant on a number of variables including – obviously – the nature of the hereditament being valued, but also depending on the market and financial information available to the decision maker. While Stanberry contended unsuccessfully before the High Court that the valuation ought to have been conducted by reference to the 'profit' basis, it has not appealed the determination of the High Court that it was within the jurisdiction of the Tribunal to adopt the method it actually did.

12. That was a comparison method of valuation which depended on identifying other properties similar to the subject property and seeking to deduce from the valuation attributed to and rents obtained from those properties a valuation for the subject property. Before the Tribunal, the evidence proceeded on the basis of a consideration of the comparators advanced by each party and an examination of the extent to which they were true comparators having regard to their location, the number of car parking spaces available, the conditions attaching to the parking facilities that could be made available at the respective properties, the tariff charged to park, the hours the car parks could open, occupancy rates and the annual income from the properties (where this was known or capable of ascertainment).

13. The relevant features of the subject property were not in dispute. It has 380 spaces and is located in a busy retail area, some 100 metres from Grafton Street. Access to the car park is via Clarendon Street, with the exit on to South William Street. There is direct pedestrian access via a footbridge from the car park to the Brown Thomas department store. The property also has pedestrian access to the Powerscourt Shopping Centre. The daily tariff was at the relevant date, €3.20 *per* hour. The planning permission granted in respect of the property prohibited 'contract parking' (that is reserved space in the car park at a pre-paid rate). It also required that increased charges be imposed in respect of (and with a view to discouraging) long term parking. At the relevant time it opened Monday to Saturday from 7 am to 1 am and on Sunday from 9 am to 10 pm. The expert witness called on behalf of the Commissioner (Mr. Sweeney) expressed the view that turnover was a key element in determining the valuation of properties of this kind, and that a tenant would consider the turnover being achieved prior to the valuation date and the likely turnover that could be achieved in the years thereafter. The evidence before the Tribunal on behalf of the Commissioner disclosed revenue *per* space for the subject property in 2009 of €7,739.00, in 2010 of €6,444.00, in 2011 of €6,214.00 and in 2012 of €6,334.00. Stanberry's evidence was to the effect that average occupancy at this car park was 50%.

14. The Commissioner in his evidence to the Tribunal referred to eight other car parks, seven of which were in the city centre. Two of those were on the north side of the city, and six on the south. These included Drury Street car park (NAV *per* space of €1,000.00), the RCSI car park (NAV *per* space of €2,150.00) and St. Stephen's Green Shopping Centre car park (NAV of €2,150.00 *per* space).

15. Two of the comparators advanced by the Commissioner are important to this appeal. The first of these was the Setanta car park. This is located in Nassau Street, also in Dublin's south city centre and is approximately 500 metres from Grafton Street. This had a net annual value of €731,000.00. There were 225 spaces, the valuation *per* space being €3,250.00. The parking tariff was €4.00 *per* hour generating a revenue per space of between €6,000.00 and €7,000.00 *per* annum. While Stanberry owns the freehold in the subject property, the Setanta car park had been rented by its current occupier since 2010. It paid a total rent *per* annum of €736,667.00. The valuation of this property was under appeal at the time of the Valuation Tribunal hearing – including a third party appeal by Stanberry.

16. The second was Trinity Street car park. This is located on Andrews Lane and is approximately 200 metres from Grafton Street. This had a net annual value of €731,000. There were 173 spaces, the valuation *per* space being €3,250.00. The property generated a revenue *per* space of between €6,000 and €7,000 *per* annum. The Trinity Street car park had been rented by its current occupier since 2009. It paid a total rent *per* annum of €664,429. The valuation of this property was also under appeal at the time of the Valuation Tribunal hearing.

17. Based on the comparator evidence thus tendered, the evidence of the Commissioner's expert valuer was that a valuation of €3,000.00 *per* space equating to 47.36% of 2012 revenue represented a valuation in line with similar properties in the locality. He expressed the view that the subject property was the best located car park in Dublin city centre and that that Setanta, Trinity Street and the subject property were the best performing car parks in the city.

18. Stanberry stressed in its evidence what it contended were increasing impediments and disincentives surrounding the subject property of which the hypothetical tenant would be aware and which, it was said, would impact detrimentally on the revenue earning ability of the car park. These included declining year-on-year traffic volumes and revenue, the one-way traffic system to and access from the car park, restrictions on traffic arising from the bus gate corridor in College Green together with construction works on the LUAS cross city.

19. As with the Commissioner's expert witness, Stanberry's expert valuer tendered comparators. These included a number of car parks on the north side of the city centre – Parnell Centre car park, IFSC car park, Irish Life car park and Drury Street car park. One of the properties on which he placed particular reliance was the Arnott's car park. This is located on the north city centre adjacent to Arnott's department store. As with the subject property, it was prohibited from allowing contract parking, but unlike the Brown Thomas car park, the Arnott's car park is owned and operated by the department store owner. It has 370 spaces and has a tariff of €2.80 *per* hour. Stanberry contended that it had an occupancy rate of 64.39 %. This property had a net annual value of €592,000.00, the valuation *per* space being €1,600.00. This was under appeal at the time of the Tribunal hearing.

THE TRIBUNAL DECISION

20. As I have already noted, the hearing proceeded before the Tribunal over two days, the expert valuers called by each party giving evidence as to the net asset value of the subject property contended for by them and being cross-examined in respect of same. Following the appeal, the valuation of the subject property was reduced by the Tribunal to €1,045,000.00 or €2,750.00 *per* space.

21. The basis for the Tribunal's decision appears in two final parts of its ruling, the first headed '*Conclusion*' and the second '*Findings*'. It is unclear what distinction the Tribunal saw as between the propositions in each of these sections, or why it was necessary to divide them in this way.

22. Under the heading '*Conclusions*' the following was stated:

    (i) The Tribunal said that the subject property differed from "*the comparable*" in that parking must be short term and no contract parking is permitted by the planning permission. The Tribunal said "*no other car parks have this dual restriction*". While unclear, it would appear that the Tribunal intended to refer to *comparables* in the plural.

(ii) The Commissioner's "*comments*" that the bus gate and Luas works are reflected and included in the various comparisons were described by the Tribunal as "*persuasive*".

(iii) Noting Stanberry's arguments regarding the differentiation between north side and south side used by the Commissioner in arriving at a "*schematic*" for the valuation of car parks, the Tribunal observed that the Commissioner's argument "*that Brown Thomas is the third best car park in the City with the other two being located on the south side is relevant.*"

(iv) The Tribunal said that "*limited weight can be placed on Drury Street as it is not purpose built, spaces are not marked and operational issues*".

(v) The Tribunal recorded that it was "*persuaded that the operation of St. Stephen's Green Shopping Centre and RCSI Carparks in tandem lead to congestion issues*"

(vi) Of the Setanta Carpark, the Tribunal said "*the Tribunal considers the argument that this is in effect a 2005 rent as the operator renewed an existing lease in 2010 had some merit, however the fact that it was negotiated between the two parties means weight can be put on it*".

(vii) Finally, the Tribunal said the following "*[t]he* ***presence of contract parking in*** *the various comparisons including* ***Arnotts*** *together with their proximity to retail destinations will make their application to the subject* ***difficult***" (emphasis added).

23. The last conclusion contains an error of fact: contract parking was not permitted in Arnott's car park. That this was an error is accepted by the Commissioner – although obviously the parties disagree as to what the consequences of that error are. It is an error which is inconsistent with an earlier statement in the Tribunal decision which recorded of this car park (p.4) that "*contract parking is not permitted*". It was also inconsistent with the evidence before the Tribunal.

24. The final section of the Tribunal's decision ('*Findings*') is as follows:

> "*The Tribunal finds that the* ***schematic applied by the Commissioner*** *is of limited benefit in this particular case as it does not make sufficient* ***adjustment*** *for planning restrictions in this case and it applies a divide between the Northside and Southside that makes comparison between the two difficult.*
>
> *However, the Tribunal is persuaded by the market and* ***emerging tone of the list*** *comparisons close to the subject, particularly Setanta Carpark and Trinity Street Carpark* ***subject to adjustment****.*
>
> *The Tribunal finds that insufficient allowance has been made to the subject for the presence of restrictions which will undoubtedly affect the price that a willing occupier would pay.*

Accordingly, the Tribunal has reduced the rate applied by the Commissioner by Euro 250 per space to €2.750 per space"

(emphasis added).

25. Three issues present themselves as to the interpretation of these '*Findings*'. First, counsel for neither party was entirely clear as to what the ***schematic*** referred to by the Commissioner in its first finding actually was. Mr. Hickey SC for Stanberry suggested that this referred to a matrix tendered in the course of the evidence of the expert on behalf of the Commissioner, Mr. Sweeney. That matrix referred to eight car parks, three of which were on the northside of the city, and presented a range of information relevant to the valuation of each of these properties.

26. Second, the term ***emerging tone of the list*** appearing in the second finding is not defined in the decision. The phrase was used by the expert witness for Stanberry, and – as I explain below – it was used in a decision of the Tribunal, *Marks and Spencer v. Commissioner of Valuation* (9th April 2009, VA08/5/125). There, it was given a very particular meaning – to which I will return. There was also a disagreement between the parties as to the implication of this phrase. Mr. Power SC for the Commissioner suggested at the hearing of this appeal that it did not necessarily have the meaning attached to it in the *Marks & Spencer* case and that it may have simply referred to the fact that the valuation list was in the course of development.

27. Third, counsel disagreed as to the meaning of the term ***subject to adjustment*** as it appears in the second finding. Counsel for the Commissioner contended that this referred to an adjustment being made by the Tribunal to reflect the fact that the examples of comparators to which the Tribunal referred were under appeal. Counsel for Stanberry suggested that the adjustment related to the need to reduce the values of comparator properties to reflect the fact that they did not have restrictions on contract parking in their planning permissions – which the subject property did. In this regard he stressed that the term '*adjustment*' is applied in this very context in the first finding.

THE HIGH COURT DECISION

28. Following the decision, Stanberry indicated its intention to appeal and a Case Stated was prepared. This was signed by the chairperson of the Tribunal – who was not a member of the panel who had heard the appeal. The Commissioner took objection to the case stated as so signed, and an application was brought before the High Court to dismiss it. The Court directed and suggested amendments to the Case Stated, following which the parties agreed the contents of an amended Case. The costs of that process were awarded to Stanberry. This ruling as to costs forms part of this appeal and will be addressed independently of the substantive decision of this Court.

29. O'Regan J. in the course of her judgment identified the relevant principles attending an appeal on a point of law pursuant to s. 39 of the Act. I will return to those principles shortly. Her conclusion in respect of the first issue – the effect of the error of fact insofar as Arnott's car park was incorrectly recorded in the conclusions section of the judgment

as having contract parking – was that because of this mistake of fact the determination of the Tribunal was based on an error of law. The Court reached this conclusion by reference to the following analysis.

30. First, the Commissioner had contended that this statement should be read so that it said, effectively, not only that the presence of contract parking at Arnott's was making it a difficult comparator, but also that the fact it was proximate to a retail destination in and of itself would make it a difficult comparator. He also contended that Stanberry had overstated the impact on the decision of the errors (including this one). O'Regan J. rejected this contention, noting that while the construction so presented was "*one means of reading the sentence*" an equally valid understanding of it was that what rendered Arnott's a difficult comparator was the combination of the two. Because the Court was not satisfied that the Tribunal would have excluded Arnott's on the sole basis of proximity to retail destinations, and because the Court determined that it was not the intention to exclude car parks on the north side of the city from consideration, the error of fact was material.

31. Second, the Court approved and expressly relied upon a decision of the English Court of Appeal, *E. v. Secretary of State for the Home Department* [2004] QB 1044, where four factors which would render a mistake of fact the basis for a statutory appeal on a point of law, were identified. These depended on the mistake being as to an existing fact, to the fact being uncontentious and objectively verifiable, to neither party having been responsible for the mistake, and to the mistake playing a material (but not necessarily decisive) part in the decision–maker's reasoning.

32. Third, and finally, the Court emphasised its view that the error of the Tribunal was all the more significant because the comments of the Tribunal in respect of the Commissioner's schematic suggested that the north side car parks were not being excluded from consideration.

33. In relation to the issue arising from the phrase *the emerging tone of the list*, the Commissioner had – as I have noted – contended that the reference to "*subject to adjustment*" in the part of the findings dealing with this issue made it clear that the Tribunal was aware that the relevant valuations were under appeal and was therefore taking this into account. He had also contended that the fact that the Tribunal had referred to the *emerging tone of the list*, further demonstrated that the Tribunal had recognised that because there were pending appeals, the tone of the list had not yet been arrived at.

34. In addressing these contentions, the Court attached particular importance to the comments of O'Malley J. in *Commissioner of Valuation v. Carlton Hotel Dublin Airport* [2013] IEHC 170 [2016] 2 IR 385. There, O'Malley J. approved the explanation of the operation of tone of the list having regard to the existence of appeals ventured in the decision of the Tribunal in *Marks and Spencer v. Commissioner of Valuation*. That explanation – to which I will return – assumed that the *emerging tone of the list* referred only to valuations which had been accepted, agreed or determined.

35. O'Regan J. concluded that the Tribunal's reference to the concept of the *emerging tone of the list* had the meaning as determined in *Marks & Spencers*. Further, the High Court Judge did not accept that the phrase "*subject to adjustment*" in the Tribunal's final section implied that the Tribunal was expressing its understanding that the Setanta and Trinity car parks might be reduced on appeal (as the Commissioner had been contending). Even if that was what the Tribunal was determining, the High Court Judge held, this meant that the Tribunal was making a guestimate as to the outcome of the appeal which was "*neither valid nor appropriate*". By highlighting Setanta and Trinity car parks in the context of *emerging tone of the list* there was an error of law on the part of the Tribunal. She concluded:

> *"The Tribunal erred in law in having regard to or placing weight on the emerging tone of the list attributable to Setanta and Trinity Street car parks which were then under appeal."*

THE FIRST ISSUE: ARNOTT'S CAR PARK

36. Section 39(5) of the Act defines the jurisdiction of the Court on an appeal by way of Case Stated from a decision of the Tribunal. It provides:

> *"The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Tribunal with the opinion of the Court thereon, or may make such other order in relation to the matter as the Court thinks fit."*

37. The legal principles governing the jurisdiction of the High Court in an appeal on a point of law were considered most recently in *Attorney General v. Davis* [2018] IESC 27 [2018] 2 IR 357at paras. 54 to 55. There, the specific issue presented itself as to whether an appeal on a point of law under s. 29(5) of the Extradition Act 1965 included an appeal against error of fact. In giving the decision of the Court in that case McKechnie J. explained that a statutory appeal on a point of law will (unless the wording of the provision conferring that power provides otherwise) enable the Court to interfere with a decision appealed against in four – overlapping – circumstances. The non-exhaustive description of these grounds identified by the Court comprised:

(a) errors of law as generally understood;

(b) errors such as would give rise to judicial review including illegality; irrationality, defective or absence of reasoning, and procedural errors of some significance;

(c) errors which may arise in the exercise of discretion which are plainly wrong; and

(d) certain errors of fact.

38. The errors of fact which will constitute an error of law for the purposes of appeals of this kind, were reduced by McKechnie J. to three categories:

(a) findings of primary fact where there is no evidence to support them;

(b) findings of primary fact which no reasonable decision-making body could make; and

(c) inferences or conclusions.

Inferences or conclusions are thus appealable as an error of law, where they are unsustainable by reason of an underlying error of fact of the kind described by the Court, which could not follow or be deducible from the primary findings as made or which were based on an incorrect interpretation of documents.

39. In applying these principles to the first question in this case, the text of the Tribunal's decision clearly suggests what all parties agree to be an error: Arnott's does not have contract parking. If such an error had been made by the Tribunal, it would clearly be material, going as it does to the utility of one of the principal comparators relied upon by Stanberry, and doing so in a context in which the valuation of comparators was evidently key to the ultimate valuation. The starting point is therefore that the Tribunal has erred in a material finding of fact and thus its decision is affected by an error of law (see *E v. Home Secretary* at para. 66).

40. The Commissioner stresses that the evidence before the Tribunal was clear that Arnott's car park did not have contract parking, and he notes that earlier in the decision the correct position is recorded. The statement in the final sentence of the Tribunal's *Conclusions* was, he says, clearly a *mis-recital*. He notes that *"the case stated gives no indication of what weight the Tribunal gave to this issue of contract parking in Arnott's"*. He further says that the Court is being asked to determine the weight put on the factors in issue by the Tribunal in its decision. Similarly, it is said by the Commissioner that simply finding a sentence which could be interpreted as exhibiting a single error and is not described as a finding of fact *per se* in a section of the judgment headed '*Conclusions*' (as opposed to '*Findings*') is not a sufficient basis for interfering in a determination of the Tribunal. None of the case law supports the proposition, it is said, that any error means that a decision should be set aside. Looked at *in toto*, it is said, the decision of the Tribunal was not based upon an unsustainable finding of fact nor was it incapable of being supported by the facts – which it is emphasised must be all relevant facts.

41. It is difficult not to have some initial sympathy with this argument. The condemnation of the decision of the Tribunal on the basis of a single sentence, framed in a context where the evidence before the Tribunal made it clear that Arnott's car park did not have contract parking, and indeed where the Tribunal elsewhere in its decision recorded the correct factual position, is less than attractive. Had the analysis presented by the ruling as a whole made it clear that the Tribunal was not taking account of the comparator offered by Stanberry for reasons that stood independently of this error, the Commissioner would be in a position to present a coercive case for ignoring it.

42. However, none of this can be said here. Stanberry adopted the position that Arnott's car park was the most important comparator relied upon by it. The Tribunal was, of course,

entitled to reach a different view – not least of all because it was in a different part of the city. However, it is easy to see why Stanberry placed this emphasis upon this property. It was a city centre car park with a similar number of spaces to the subject property, located similarly close to a department store in a retail shopping area. The erroneous sentence presents the only clear explanation in the Tribunal's decision of why the Arnott's car park was being discounted. Indeed, if the sentence was – as the Commissioner says – merely a *mis-recital*, then it begs the question why the Tribunal was making the statement at all given that it was eliminating, not applying, Arnott's car park as a comparator.

43. This brings into focus an issue of more general application. The decision the subject of this appeal was reached in the context of a statutory process which mandates the Tribunal to give reasons for its decisions. Specific provision is made to this effect in para. 4(3) of the Second Schedule to the Act, which requires that the Tribunal issue *"a written judgment setting forth the reasons for its determination in each appeal"*. That, of course, requires reasons which meet the applicable legal test, which is to communicate sufficient information to enable the parties to the decision to consider whether they have a reasonable chance of succeeding in appealing the decision (see *Christian v. Dublin City Council* [2012] IEHC 163 [2012] 2 IR 506 at paras. 7 to 8). The same logic dictates that where a party identifies an error of fact or law in a decision the subject of a statutory appeal, and where that error relates to an issue that is *prima facie* material to that decision, the correct approach is to allow the appeal unless the reasoning of the decision maker, taken as a whole, allows the Court to conclude that the decision maker reached its conclusions independently of the error. This follows from the general principle that *"where it is uncertain what the outcome of the decision-making would be in the absence of the bad reason or reasons, then the decision should be quashed since otherwise the court becomes the effective decision maker"* (De Blacam, "*Judicial Review*" 3rd Ed. (London, 2017) at para. 17.39.

44. In this case, rather than being able to derive from the Tribunal decision a clear explanation of how it reached its decision that Arnott's car park should be excluded as a comparator, the Commissioner is compelled to contend for a re-writing of the Tribunal decision. He says that the final sentence of the '*Conclusions*' should be read so as to exclude any reference therefrom to Arnott's having contract parking. This is proposed by the Commissioner on the basis that it was the case that Arnott's did not have proximity to the retail destinations referred to at para. 6 of the High Court judgment (those near the subject property) and that this is what the Tribunal was in fact addressing. This, however, is not merely to assume that the error as to contract parking is simply blue pencilled from the Tribunal decision, but to also require that the reference to *retail destinations* is itself expanded so as to refer only to a category of retail shopping referred to at para. 6 of the High Court Judge's judgment. It is entirely unclear on what basis that exercise of interpolation should be undertaken. The approach urged by the Commissioner – that effectively the Court should overlook the error and rewrite the terms of the Tribunal's decision – depends on the Court reversing logic and ignoring not merely the error but ignoring also the fact that the Tribunal has not provided a sufficiently reasoned account of

its underlying analysis to enable the Court to determine the basis on which it decided the issue in question.

45. In that regard it is to be noted that at one point in its '*Conclusions*' reference is made to the Tribunal being "*persuaded*" by the Commissioner's arguments "*regarding opening hours between north and south inner city*". While it might be said that this was a reference to the difference in opening hours between Arnott's car park and the subject property, it is in fact pitched at a level of generality, is not tied to any one of the north city car parks referred to in the course of the proceedings and is not thereafter elaborated upon or applied to the valuation process. The statement might also sit uneasily with the Tribunal's first "*Finding*" which suggests that it felt that there was no reason in principle not to have regard to north side city centre properties – a consideration which itself underscores the need for an explanation of why the Arnott's car park was being discounted.

46. This leads to a further point, repeated throughout the Commissioner's submission. It is said that the Court should be slow to interfere with the decisions of expert administrative tribunals, reliance being placed in that regard upon the judgment of Hamilton CJ in *Henry Denny and Sons (Ireland) Ltd. v. Minister for Social Welfare* [1998] 1 IR 34, of Costello J. in *Proes v. Revenue Commissioners* [1998] 4 IR 174 and of Kelly J. in *Premier Periclase Ltd. v. The Commissioner of Valuation* (Unreported, High Court, Kelly J., 24 February 1999). To that end, the Commissioner prays in aid '*curial deference*'.

47. When '*curial deference*' first featured in the case law in this jurisdiction, the concept was intended to do no more than reflect the common-sense consideration that in relation to certain types of appeals from certain statutory decision making bodies the Courts should not assume the function of re-determining *de novo* issues which have been consigned by the Oireachtas to certain subordinate expert decision makers. The first reference to the term was in *M&J Gleeson & Co. v. The Competition Authority* [1999] 1 ILRM 401. There, it was introduced by Kearns J. into his analysis of the scope of the appeal arising in that case because the relevant statutory provision (s. 9 of the Competition Act 1991) enabled a party to appeal a decision of the Competition Authority to the High Court, without specifying in any way what, exactly, such an appeal entailed. The appellants had contended for a wide interpretation of the work "*appeal*" as it appeared in the legislation, asserting that the Court should undertake a *de novo* review of the Competition Authority decision in issue in that case. Based on the decision of the Canadian Supreme Court in *Canada (Director of Investigation and Research) v. Southam Inc.* [1997] 1 SCR 748, Kearns J. posited what was, essentially, a sliding scale of review by reference to the degree of specialisation of the decision making body *"the greater the level of expertise and specialised knowledge a particular tribunal has, the greater the reluctance there should be on the part of the court to substitute its own view for that of the authority"* (*M&J Gleeson & Co.* at 410.) This brought the Court to the point in that case where the standard of review – notwithstanding the seemingly broad scope of the appeal provided for under the relevant legislation – was framed by reference to whether the decision of the authority appealed against "*lacks a reasonable basis*" (*M&J Gleeson & Co.* at 411).

This reasoning was subsequently adopted by the Supreme Court in *Orange Limited v. Director of Telecoms (No.2)* [2000] 4 IR 159, at pp. 184 to 185. As with *M&J Gleeson & Co.*, that case was also concerned with a broadly drawn right of statutory appeal, as opposed to an appeal only on a point of law.

48. However, some features of '*curial defence*' as thus understood merit emphasis. Kearns J. clearly did not believe that he was introducing any new concept into the law; he expressly observed that his conclusions reflected what had already been said by Hamilton CJ in *Henry Denny and Sons (Ireland) Ltd. v. Minister for Social Welfare* [1998] 1 IR 34, pp. 37 to 38. More fundamentally, he was concerned with the very specific issue of the scope of a statutory appeal which, in its own terms, was unqualified. When dealing with either judicial review proceedings, or appeals on a point of law, the issues which thus concerned the Court in *M&J Gleeson & Co. v. The Competition Authority* do not arise in the same way.

49. The Commissioner says in this case, as parties in a similar position frequently do, that the Court should be *"slow to interfere with the decisions of expert administrative Tribunals"*. Without significant qualification, this statement is apt to mislead. Administrative tribunals, expert or otherwise, obtain no deference on pure issues of law (see *Millar v. Financial Services Ombudsman* [2015] IECA 126 [2015] 2 IR 156 at - in particular - para. 62). The remarks of Kelly J. in *Premier Periclase Limited v. Commissioner of Valuation* [1999] IEHC 8, makes it clear that errors of fact *simpliciter* do not present any issue of curial deference either; *"[w]hen conclusions are based on an identifiable error of law or an unsustainable finding of fact by a Tribunal, such conclusions must be corrected*" (at para 25). A similar statement of principle appears in *Nangles Nursery v. Commissioner of Valuation* [2008] IEHC 73 at para. 25. It follows that in both judicial review proceedings, and appeals on a point of law, the scope for 'deference' is limited.

50. Furthermore, in judicial review proceedings (and insofar as it arises in an appeal on a point of law) the notion of 'deference' to the decisions of an expert body is already built in to the procedure by virtue of the combined effect of the presumption of validity, and the stringent test for review on the grounds of unreasonableness reflected in *O'Keefe v. An Bord Pleanala* [1993] 1 IR 39. Indeed, I note that in *Attorney General v. Davis* [2018] IESC 27 the Court (at para. 58) suggests some scepticism as to whether deference has any role in the appeal on a point of law provided for in that case (and see as to the need for the body claiming such deference to be operating within a specialised sphere, the judgment of McKechnie J. in *FitzGibbon v. Law Society* [2014] IESC 48[2015] 1 IR 516 at paras. 76 to 85). This reflects the analysis proposed by Charleton J. in *EMI Records (Ireland) Ltd. v. Data Protection Commissioner* [2013] IESC 34 [2013] 2 IR 699 at para. 20:

> *"Curial deference does not aid such a specialist tribunal beyond according due respect for its expert factual assessment or decision on the balance of competing interests. Curial deference cannot extend to sanctioning breaches of the rules as to*

jurisdiction or the bypassing of the tribunal of the obligation to incorporate fair procedures."

51. None of this is to deny any role for the sentiment underlying '*curial deference*' in an appeal of a decision of the Tribunal. Unlike the position under consideration in *Attorney General v. Davis*, when the Oireachtas prescribed an appeal on a point of law from a decision of the Valuation Tribunal, it must be assumed that that process would operate cognisant of the fact that issues will arise in the course of a valuation appeal which are peculiarly suited to the expert determination of the specialist body. These include considerations such as the reliability of comparators, the appropriate method of valuation, and the correct approach to application of particular valuation concepts such as the tenant's share or divisible balance. In those cases, where an appeal on a point of law presents an issue of underlying fact or inference in relation to matters within those zones of expertise, the Courts should certainly afford very significant weight to the decision of the expert body.

52. However, the arguments advanced by the Commissioner in this appeal extend the doctrine beyond these parameters, effectively seeking to extract from '*curial deference*' a supercharged presumption of validity. It was claimed at one point, for example, that the Court failed to observe due deference to a specialist body by failing to adopt one interpretation of the last paragraph of the conclusions section of the Tribunal's decision: the Commissioner has sought to contend that '*curial deference*' means that if there were two possible interpretations of the decision of the Tribunal available, the Court is required to adopt the interpretation that upholds it. That is not a correct statement of the principle. Deference means that in those areas touching on the Tribunal's expertise, the Court should be slow to interfere with the Tribunal's reasoning. It does not mean that where the Tribunal's reasoning is unclear so that there are differing possible interpretations of its decision the Court must simply assume that it was correct in the conclusion it reached. As Charlton J. said in *EMI Records v. Data Protection Commissioner* at para. 22, "*curial deference cannot possibly arise where by statute reasons for a decision are required but none are given.*" '*Curial deference*' is thus properly understood as depending on the Tribunal having provided a properly reasoned decision, not as affording a mechanism for compensating where the decision is not so reasoned. This is evident from the judgment of Hamilton CJ in *Henry Denny* itself:

> *"… it should be recognised that tribunals which have been given statutory tasks to perform and exercise their functions, as is now usually the case, with a high degree of expertise* ***and provide coherent and balanced judgments on the evidence and arguments heard by them*** *it should not be necessary for the courts to review their decisions by way of appeal or judicial review"* (at para. 38 (emphasis added)).

53. Finally, it is said that the High Court Judge erred in failing to consider the evidence of market rent that was otherwise available to the Tribunal in reaching its decision. This, it is said, was a very important part of the evidence. However, the decision refers in its

operative part only once to evidence of the market, and that is in the context of the Setanta and Trinity Street car parks. There is no basis on which the Court can conclude that evidence of market rents played any role in out-ruling Arnott's car park.

THE SECOND ISSUE: THE EMERGING TONE OF THE LIST

54. The other issue presenting itself in this appeal arises from the second '*finding*' recorded in the Tribunal's decision. Stanberry's point in this regard is simple. The Tribunal recorded itself as being persuaded by "*the market and emerging tone of the list comparisons close to the subject,*" particularly Setanta and Trinity Street car parks. Stanberry points to these valuations being subject to appeal. It says that the phrase *emerging tone of the list* cannot be applied to decisions that are subject of appeal. Therefore, it is said, the Tribunal erred in taking account of these comparators under the rubric *emerging tone of the list*.

55. In this regard, it is important that the issue arises in this appeal in the context of a revaluation made under s. 19 of the Act. This provision enables the Commissioner to make an order (the 'valuation order') specifying a rating authority area as being an area in relation to which the Commissioner proposes to appoint an officer *"to organise and secure the carrying out of a valuation of every relevant property situate in that area"* (s. 19(1)). Upon the making of that order, an officer is appointed to *"organise and secure the carrying out of a valuation of every relevant property situate in"* the relevant rating authority area (s. 19(2)). Revaluations of this kind have to be carried out within ten years of a previous revaluation (s .25). Although not in force at the relevant time, it is to be noted that s. 19(5) as inserted by the Valuation (Amendment) Act 2015 now directs that the valuation list be drawn up and compiled by reference to relevant market data and other relevant data available on or before the date of issue of the valuation certificates, and shall achieve – insofar as reasonably possible – both correctness of value and equity and uniformity of value between properties on that valuation list.

56. The Commissioner when making such a valuation order must specify a date on which the Commissioner proposes publish a list comprising every relevant property that has been the subject of revaluation in this way (s. 21(1)). This is the '*valuation list*' (s. 21(2)). That list may be subject to alteration in respect of individual properties if the properties are revised.

57. A revaluation of this kind falls to be contrasted with a revision of the valuation of a property. The procedure for revision is set out in ss. 27 and 28 and can be triggered in respect of any individual property by rating authority in that area, or by persons having an interest in or occupiers of individual properties. Section 28(4) allows the officer appointed to this end (the "revision officer") to *inter alia* amend the valuation of the property on the valuation list if he is satisfied that a "*material change of circumstances*" (as defined in s. 2(1) of the Act) has occurred since the last valuation under s. 19 was carried out. Section 49(1) then provides as follows:

> *"If the value of a relevant property … falls to be determined for the purposes of section 28(4) … that determination shall 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."

58. This is the '*tone of the list*' and, obviously, is intended to ensure consistency of the NAV across a rating authority area. It is not as much a method of valuation *per se* as it is a method of comparison. It enables valuation by reference to the values as they appear in the list of properties comparable to the property in issue. It operates thus in a context in which quality of rating is a fundamental principle of the law (*Poplar Assessment Committee v. Roberts* [1922] 2 AC 93 at pp. 108, 119).

59. While s .49(1) is framed by reference only to the revision process under s. 28(4), s. 31(a)(ii) makes it clear that in either an appeal against a determination under s. 19 or s. 28, the '*tone of the list*' is relevant. It provides that an appellant in either such appeal shall specify:

> *"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".*

60. The specific issue that presents itself here arises because where a revaluation is undertaken – unlike the position where a revision is underway - and properties are initially listed, there is no established '*tone of the list*' as valuations as they appear on that list may yet be challenged. In the course of its decision of 7th August, 2008 in *Marks and Spencer (Ireland) Ltd. v. Commissioner of Valuation*, the Tribunal considered the correct approach to assessments on the list where there was an appeal against that assessment.

61. It did this by differentiating between three separate phases – the *preliminary* tone, the *emerging* tone and the *finally established* tone of the list, these presenting a spectrum with little weight being afforded to entries at the preliminary phase, while the list at the final stage is at a point where because the tone of the list cannot be challenged, rental evidence is of lesser importance in the assessment process (paras. 13 and 14 of the ruling). The *emerging tone* lies between these:

> *"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 cases agreed at the representation stage under section 29) or otherwise unchallenged.*
>
> *At the time of the 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****. Finally a stage will come – but only when all the appeal procedures under sections 30 and 34 are completed – when the tone of the list will finally become established and thereafter cannot be challenged. From this point onwards section 49 will come into play"* (emphasis added).

62. This explanation follows closely the analysis by the Lands Tribunal in England in *O'Brien v. Harwood* (VO) [2003] RA 244, at paras. 40 to 41, cited with approval by the English Court of Appeal in *Bradford (Valuation Officer) v. Vtesse Networks Ltd.* [2010] EWCA Civ. 16:

> *"There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, entries will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by an LVT or this tribunal or accepted by lack of challenge. Finally, a stage is reached where enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have been settled. Rents will be largely subsumed into assessments. At that stage rating surveyors will have little regard to rents and pay considerable attention to assessments."*

63. As I have already observed, the explanation proffered by the Tribunal in *Marks & Spencer* was approved by O'Malley J. in her decision in *Commissioner of Valuation v. Carlton Hotel Dublin Airport Limited*. Neither party to this appeal contended as such that either decision was wrong – although the Commissioner has noted that s. 63 (to which I refer later) was not considered in *Carlton Hotel*. The question that thus arises in regard to the second issue in this appeal relates to the implication of the term *emerging tone of the list* as it appears in the Tribunal decision, given that the Tribunal in Stanberry's appeal applied this phrase to properties which were subject to appeal. This issue is best examined in stages.

64. First, it is clear when the Tribunal in *Marks & Spencers* used the term the *emerging tone of the list*, it was clearly referring only to valuations that had been *accepted, agreed or determined.*

65. Second, it is clear that the mere fact that a valuation is under appeal does not preclude the Tribunal from having regard to it. The Tribunal in *Marks & Spencers* clearly envisaged at least the possibility that appealed valuations could be taken account of by the Tribunal in determining the NAV, although the weight to be given to opinions of value untested by negotiation or by challenge will be very limited. This is reflected in the decision of the English Court of Appeal in *Bradford (Valuation Officer) v. Vtesse Networks Limited*, where – as I have noted – the explanation of tone of the list of the Lands Tribunal in *O'Brien v. Harwood* was cited with approval *"when a new rating list is put on deposit, entries will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation"*. A similar statement appears in *"Ryde on*

Rating and the Council Tax" – *"[a]ssessments under appeal will carry less weight than assessments which are settled in the absence of an appeal or following determination of an appeal"*. (Guy R. G. Roots QC *et al, "Ryde on Rating and the Council Tax"* 14th Edition (London, 1991) at Chapter 6B para. 483)

66. Third, the term *emerging tone of the list* is not an established term of art. The submissions of counsel before this Court were to the effect that it first appeared in 2008 in the decision in *Marks & Spencer*. It was used in passing by Mr. Halpin, Stanberry's expert witness, in the course of his precis of evidence; *"the broader market evidence at or close to the valuation date and the emerging tone do not support the Commissioner's assessment of the subject"*, and he is recorded in the Tribunal decision as referencing the phrase in a similar context in his evidence in chief. As the Commissioner notes in his submissions to this Court, Stanberry relied upon valuations that were under appeal – including Arnott's car park itself.

67. Fourth, the Tribunal decision the subject of this appeal operated on the basis that the evidence of the valuation of, in particular, the Setanta and Trinity car parks was not being accorded *"limited"* weight by the decision maker. Whatever the Tribunal meant by *emerging tone of the list*, it was clearly material to the Tribunal's decision: that is the only explanation for the fact that the Tribunal recorded itself as being persuaded by that *emerging tone* together with the *'market'*.

68. These considerations together point to the conclusion that the Tribunal erred when it juxtaposed the Setanta and Trinity Street car parks with the *emerging tone of the list* and found itself *persuaded* by these comparators. The Court must start from the premise that when the Tribunal used the term, it was doing so in the same way as it had done in its own decision in *Marks & Spencer*. If that is correct, the Setanta and Trinity Street car parks were not properly viewed as forming part of the *emerging tone* of the list because they were under appeal. On that assumption, therefore, the Tribunal erred in law by affording weight to comparators on an erroneous basis. Even if the Tribunal was using the term *emerging tone of the list* in a different sense (and if it was, it should have both said so and explained why) it erred in elevating the comparators in the manner in which it did. If not part of the *emerging tone of the list*, these valuations were admissible as evidence, but of very limited weight. If the Tribunal was viewing the comparators as being of limited weight, it is hard to see why it would have designated them as part of the *emerging tone of the list* at all, and harder to see why it would have viewed itself as being *persuaded* by them.

69. The first point made by the Commissioner in this regard is that the trial Judge erred insofar as she concluded that the mere fact that a comparator is under appeal does not mean that it is not a comparator at all. That, the Commissioner says, is wrong in law. Had the High Court Judge determined that the Tribunal was absolutely precluded from having regard in the limited way to which I have referred, to valuations that were under appeal, this would be correct. This is not how I read her judgment. What she said, at para. 22, was that the concept of the *emerging tone* involves the review of matters that have been

accepted, agreed, or determined and that it did not embrace those under appeal. Her concern was with fixing a definition on the term used by the Tribunal itself. The definition upon which she settled was the Tribunal's own meaning, albeit tendered in a different case. Once the Court decided that this was what the term *emerging tone of the list* meant, then it followed that it could not be applied to valuations that were subject to appeal.

70. Second, the Commissioner says that when the Tribunal used the phrase *"subject to adjustment"* in its decision, it was in fact referencing the fact that the valuations were under appeal. There are three problems with this proposition. First, I have difficulty in seeing how this meaning can be attributed to the Tribunal decision. In fact, in my view it is more likely (as Counsel for Stanberry submitted in argument) that the Tribunal was using the word "*adjustment*" in this paragraph in the same sense in which it had introduced the phrase in the preceding paragraph, that is referring to an adjustment to reflect the planning restrictions. Second, it is very difficult to understand – if this was what it was doing – how the Tribunal did or could reduce the valuation to reflect the possibility of the valuation being upset on appeal. Third, this proposition brings me back to the point I made in the context of the first issue in this appeal: it is the function of the Court on an appeal of this kind to review the decision of the Tribunal in issue, not to engage in the exercise of re-writing its decision so as to sustain its validity. Whatever way the phrase "*subject to adjustment*" in the second paragraph of the '*Findings*' is read, there is a very real ambiguity to the extent that it is not possible to determine what it is the Tribunal meant. It should not be a matter for the Court in an appeal of this kind to have to speculate as to what that meaning was.

71. Next, the Commissioner notes that this part of the Tribunal decision did not merely rely upon the *emerging tone of the list*, but that the Tribunal also viewed itself as persuaded by '*the market*'. Assuming that this is a reference to market rents obtained for comparable properties this could well afford a credible basis for the conclusions reached by the Tribunal. The evidence before the Tribunal was that in relation to the Setanta car park the rent per space was €3,277.00 and €3,266.00. In respect of the Trinity Street car park, the rent was €3,840.00 *per* space. And of course the Tribunal did not merely base its decision on these two car parks, referring also to the *comparisons close to the subject*. The rent for RCSI car park was €2,544.00 *per* space, and that for Stephen's Green shopping centre €2,150.00 *per* space. Across that spectrum of rent *per* space for proximate comparison properties, it cannot be said that the Tribunal had no basis for reaching the NAV per space fixed by it at €2,750.00 *per* space.

72. However, the test for determining the implication of an error where it forms merely part of the rationale for a decision is not whether the error was the cause of the decision – in the sense of whether but for the error the decision would not have been made – but whether it was material: *"the mistake must have played a material (not necessarily decisive) part in the tribunal's reasoning"*, *E v. Home Secretary* at para. 66. The manner in which the Tribunal expresses its finding on this issue makes it difficult to conclude other than that the mistaken belief that the Setanta and Trinity Street car parks formed

part of the *emerging tone of the list* was material to the conclusion reached by it on the issue. In that regard it is significant, as Stanberry notes in its submissions to the Court, that the valuations then fixed for Setanta and Trinity car parks were both €3,250.00 *per* space. The Tribunal moved three lines after the reference to these properties to its calculation, to recording that it was reducing the rate for the subject property from €3,000.00 *per* space by €250.00 (presumably reflecting the adjustment for the contract parking preclusion). It is not unreasonable to conclude that it was the putative rateable valuations per space that were upper most in the Tribunal's reasoning, rather than the market evidence of rents which could not as readily be used to produce a final figure.

73. Fourth, the Commissioner points to the provisions of s. 63 of the Act which, he contends, were taken account of in neither the *Marks & Spencer* nor the *Carlton Hall* cases.

74. Section 63(1) provides that:

> *"The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of this Act."*

75. Insofar as the Commissioner seeks to extrapolate from this provision the proposition that once properties appear on the list, he is entitled to value other properties by reference to that value irrespective of whether the underlying valuation is being appealed, I believe he is in error. The purpose of this provision is to prevent a collateral attack on valuation of a property on the list, not to condition the weight to be given to values on the list for the purposes of the valuation of other properties. Neither the ruling of the Tribunal in *Marks & Spencers* nor of the High Court in *Carlton Hall* affect the operation of s. 63 in any way. Section 63 functions so as to ensure that the value of a property on the list is taken as the correct value. Section 49(1) posits (for the purposes of an appeal of a decision made by way of revision) that the determination of value be made by reference to the values as they appear in the list. The approach adopted in the decisions in *Marks & Spencers* and *Carlton Hall* determine the weight that can be attached to that value pending the outcome of appeals against the valuation for the purposes of valuing other properties in a revaluation. There is no inconsistency between the two. They are directed to different things – s. 63 to the conclusiveness of the list, the cases to the weight to be given to the conclusive valuations in the list in a revaluation.

CONCLUSION

76. The Court cannot conclude that the admitted error in relation to the Tribunal's description of the Arnott's car park was other than material to its decision, and it must conclude that the Tribunal in referring to the *emerging tone of the list* was erroneously referring and attaching significant weight to, the valuation of properties then under appeal. It follows that this appeal should be dismissed and that questions one and two in the Case Stated from the Tribunal should be answered as proposed by the High Court Judge.