ACQ/41/2005

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – acquisition of former industrial premises – claim for loss of development value – valuation – planning permission in no-scheme world – whether planning permission that would have been granted in no-scheme world to be assumed or whether claimant confined to hope value – method of valuation – residual basis adopted in absence of adequate comparables – compensation determined at £608,000

IN THE MATTER of A NOTICE OF REFERENCE

BETWEEN **SPIREROSE LIMITED (in administration)** **Claimant**

and

TRANSPORT FOR LONDON **Respondent**

Re: 64-70 Holywell Lane, London EC2

Before: The President and P R Francis FRICS

Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL
on
13 February and 2 – 5 July 2007

Nicholas Nardecchia instructed by Lodders, solicitors of Stratford-upon-Avon, for the claimant
Michael Barnes QC instructed by TfL Legal Services for the respondent

The following cases are referred to in this decision:

Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment [2000] 2 AC 307
Melwood Unit Pty Ltd v Commissioner of Main Roads [1979] AC 426
Jelson Ltd v Blaby District Council [1977] 1 WLR 1020
Purfleet Farms Ltd v Secretary of State for Transport [2002] RVR 203
Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands [1947] AC 565
Waters v Welsh Development Authority [2004] 1 WLR 1304
Jelson Ltd v Minister of Housing and Local Government [1974] RVR 406; [1970] 1 QB 243
Williamson v Cambridgeshire County Council (1977) 34 P & CR 117
Pentrehobyn Trustees v National Assembly for Wales [2003] RVR 140
Stayley Developments Ltd v Secretary of State [2000] 1 EGLR 167
Horn v Sunderland Corporation [1941] 2 KB 26
Director of Public Buildings and Land v Shun Fung Ltd [1995] AC 111
Porter v Secretary of State for Transport [1996] 3 All ER 693
Margate Corpn v Devotwill Investments Ltd [1970] 3 All ER 864
Davies v Taylor [1974] AC 207
Myers v Milton Keynes Development Corpn [1974] 1 WLR 696
Roberts v South Gloucestershire District Council [2003] RVR 43
Thomas's Executors v Merthyr Tydfil County Borough Council [2003] RVR 246
RMC (UK) Ltd v London Borough of Greenwich [2005] RVR 140
Essex County Showground Group Ltd v Essex County Council [2006] RVR 366
Snook v Somerset County Council [2004] RVR 254

The following further cases were referred to in argument:

Admiral Management Services Ltd v Para-Protect Europe Ltd [2002] 1 WLR 2722
Bwllfa and Merthyr Dare Steam Collieries (1891) v Pontypridd Waterworks Company [1903] AC 426
Chaplin v Hicks [1911] 2 KB 786
Cheater v Cater [1918] 1 KB 247
Cornwall Coast Country Club v Cardgrange Ltd [1987] 1 EGLR 146
Co-operative Wholesale Society Ltd v National Westminster Bank plc [1995] 1 EGLR 97
Cuckmere Brick Company Limited v Mutual Finance Limited [1971] 1 Ch 949
Curry's Group Plc v Martin [1999] 3 EGLR 165
Dawkins v Ash Brothers & Heaton Ltd [1969] 2 AC 366
Duvan Estates Ltd v Rossette Sunshine Savouries Ltd Estates Gazette 30 January 1982
Engell v Fitch (1869) LR 4 QB 659
Frankenberg v Famous Lasky Film Services Ltd [1931] 1 CA 428
Garton v Hunter (VO) [1969] 2 QB 37
Gaze v Holden (1983) 266 Estates Gazette 998
Great Eastern Railway company v Haughley (1866) LR 1 QB 666
Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd (1976) (unreported)
Jacobs v London County Council [1950] AC 361
Lee v Minister of Transport [1966] 1 QB 111
Leschke v Jeffs and Faulkner [1955] Queensland Law Notes 67
London County Council v Tobin [1959] 1 WLR 354
Lynall v Inland Revenue Commissioners [1972] AC 680

Re Nossen's Letters Patent [1969] 1 WLR 638
Norwich Union Life Insurance Society v Preston [1957] 1 WLR 813
Pecheries Ostendaises v Merchant Marine Assurance Company [1928] 1 KB 750
Segama v Penny Le Roy Ltd Estates Gazette 28 January 1984
Singer and Friedlander Ltd v John D Wood & Co [1977] 2 EGLR 243
Tate & Lyle Food and Distribution Ltd v Greater London Council [1982] 1 WLR 149
Trocette Property Company Ltd v Greater London Council (1974) 28 P&CR 408
Tudor Properties Ltd v Bolton Metropolitan Borough Council [2000] RVR 94
Windward Properties Ltd v Government of St Vincent and the Grenadines [1996] 1 WLR 279
Yorkshire Bank Ltd v Hall [1999] 1 WLR 1713
Zubaida v Hargreaves [1995] 1 EGLR 127
Baker v The Queen [1975] AC 774
R v Warner (1662) 1 Keb 66
Camrose v Basingstoke Corpn [1966] 1 WLR 1100
Van Dyck v Secretary of State for the Environment [1993] JPL 565
CTSE Kwong Lam v Wong Chit Sen [1983] 1 WLR 1349

DECISION

Introduction

1. The claimants in this case were the owners of industrial premises that were compulsorily acquired by Transport for London under the London Underground (East London Line Extension) Order 1997. The premises were located on the south side of Holywell Lane, close to its junction with Shoreditch High Street, in the area known as South Shoreditch, a mixed-use area on the northern fringe of the City of London. The claimant's case was that at the valuation date, 3 December 2001, planning permission could reasonably have been expected, and should be assumed, for redevelopment of the land with a building consisting of basement, ground and first floor offices and two floors of flats above, and that, on this basis, the value of the land was £907,072. TfL said that it was wrong in law to assume the grant of planning permission in the absence of an assumption that fell to be made under sections 14 to 17 of the Land Compensation Act 1961 and, at the most, only hope value could be claimed. They said, however, that under the planning policies that then applied the local planning authority would not have permitted any element of residential in an application for development and that, even if it had done so, the highest value in the land was its then current use value, assessed at £227,500.

2. We began hearing the reference on 13 February 2007, but we adjourned the hearing to enable the claimant to prepare a disturbance claim. In the event, however, when the hearing was resumed in July, the claimant abandoned any claim on this basis and pursued a case based on development value. Following the hearing we received extensive closing submissions in writing and we viewed the land and its surroundings and the sites of the comparables relied on by the valuers on 9 August 2007. In addition, for the purpose of considering the residual valuations adduced by the parties and carrying out our own, we were provided with the computer program that each of the valuers had used.

The subject land and its surroundings

3. A draft statement of facts and issues had been prepared by the claimant but was not agreed, although the planning experts did produce a joint statement of the facts agreed, and issues outstanding in planning terms. From these, the evidence given and our inspection we find the following facts. The subject property formerly comprised single storey industrial premises of brick construction under flat roofs with natural light provided by windows on the front elevation and glazed skylights. Understood to have been built in the late 1940s with later extensions, it contained ground floor and basement accommodation which was acquired by the claimant in two parts – 64-67 Holywell Lane in April 1999 and 68-70 Holywell Lane in December 1999. The whole had been occupied since 1994 by Die Formes (Cutter Manufacturers) Ltd and had latterly been used as a printing works. The uses were agreed to fall within B2 (industrial) and B8 (storage) in the Town and Country Planning Use Classes Order 1987. There was a small yard and a loading area to one side, and a recessed section on the front elevation allowed for the parking of one vehicle. The buildings were demolished during 2002, after the valuation date, leaving a cleared site extending to between 3,122 and 3,354 sq ft (290 to 312 sq m).

4. The premises were located on the south side of Holywell Lane, close to its junction with Shoreditch High Street, in the area known as South Shoreditch. It was a mixed-use area on the northern fringe of the City of London, and was well served by public transport with four underground stations located nearby as well as a number of bus routes. The adjacent building to the west, 59-63 Holywell Lane, was a 4-storey unit of similar age that had the benefit of a 1984 planning permission for industrial/warehouse use with ancillary office accommodation, and the adjoining building to the east was 196 Shoreditch High Street. That was a Grade II listed building that had restaurant use at ground floor and four flats on the upper floors. To the north of the property, on the opposite side of Holywell Lane, between the rear of the shops fronting Shoreditch High Street and the railway viaduct to the west, was an area of open land used for car parking.

The compulsory acquisition

5. In autumn 1993 the acquiring authority made, and gave public notice of, an application for an order under the Transport and Works Act 1992 to authorise the construction of the East London Line Extension, a new railway line between Dalston and Whitechapel. This order, the London Underground (East London Line Extension) Order 1997, was confirmed by the Secretary of State on 20 January 1997. The order authorised the compulsory acquisition of the subject premises and other land. Notice to treat in respect of the subject land was served on the claimant on 24 August 2001 and, following notice of entry, possession was taken on 3 December 2001, which is the valuation date for the purposes of this reference. The claimant lodged notice of reference with the Tribunal on 6 April 2005.

Witnesses

6. Issues relating to planning and valuation were the subject of evidence and submission and we shall describe these in due course. Planning evidence was given for the claimant by Nicholas Mark Fennell BSc MRICS, a partner in Dalton Warner Davis LLP, Chartered Surveyors, Planning and Development Consultants, of London EC3 and for the acquiring authority by Philip Rowell BA (Hons) Dip TP MRTPI, an Associate with Adams Hendry Consulting Ltd, Chartered Town Planners and Environmental Consultants. The remaining issues are matters of valuation, and evidence on them was given for the claimant by Andrew John Hardy FRICS, Managing Director of Smith Melzack Pepper Angliss, Property Consultants of London EC2, and for the acquiring authority by David Brown Todd BSc (Econ) FRICS FCIArb a Divisional Partner and Head of the City Professional Department of Strutt and Parker, Chartered Surveyors of London EC2.

Planning: the parties' cases

7. The claimant's case was that, on the evidence of its planning expert Mr Fennell, a reasonable planning authority would have granted permission at the valuation date for a mixed-use development and in particular a scheme similar to one that had been the subject of an application to the planning authority on 24 November 2003 would have received planning permission. As a matter of law, Mr Nicholas Nardecchia submitted on behalf of the claimants, it should be assumed for the purposes of valuation that such a permission was granted. The

acquiring authority's case was that, on the basis of the evidence of their planning expert Mr Rowell, there was little likelihood of permission for a mixed use development being granted; and, as Mr Michael Barnes QC for the acquiring authority submitted, any prospect that there might be of such a permission could only be reflected in hope value since as a matter of law an actual permission could not be assumed.

Planning: the evidence

8. Mr Fennell said that he had over 20 years experience in planning matters in city fringe areas including South Shoreditch. He said that it was his professional opinion that a hypothetical purchaser, at the valuation date, would have anticipated that planning permission would be granted for a scheme similar to that proposed by the claimant in its application to Hackney Borough Council of 24 November 2003. That scheme, referred to as the "Calfordseaden scheme" after the architects who submitted the application on behalf of the claimant was, as eventually modified, for "the erection of a four storey plus basement building to provide 493 sq m of office floor space (Class B1) at basement, ground and first floors and for five residential units totalling 336 sq m, consisting of 4 x 1 bedroom flats and 1x 3 bedroom maisonette at second and third floor levels". Mr Fennell said that he would also have concluded that consent would be forthcoming for a scheme that proposed live/work accommodation instead of B1 floor space at first floor.

9. Under section 54A of the Town and Country Planning Act 1990, Mr Fennell said, any planning application would have to be determined in accordance with the statutory development plan unless material considerations indicated otherwise. The statutory development plan was the London Borough of Hackney Unitary Development plan, adopted in June 1995, and for the area in question it was evident that, at the time, there was a general presumption in favour of the provision or retention of Class B2 (general industrial) (Policy SSH2), together with a recognition that B1 might also be appropriate where it included an appropriate B2 element (Policy SSH3). Mr Fennell acknowledged that employment policy E2 stated that residential development would not normally be permitted within Defined Employment Areas, and Policy E5 required the retention of employment generating land uses, and stated that the council would resist proposals that included a residential element where there would be a loss of such employment space. It was to be borne in mind, however, that, in the claimant's proposed scheme, there would be no loss of employment space.

10. Most importantly, Mr Fennell said, any prospective purchaser of the subject land would consider the council's thinking current at the valuation date (as evidenced by actual recent planning decisions) and other material considerations including Government planning policy guidance (particularly PPG 1 and PPG 3) and statutory instruments that post-dated the UDP, together with supplementary policy guidance and proposed planning policy revisions. By the valuation date there had been a clear indication that the council intended to revise its UDP policies in response to changes in circumstances as, in 1998, LB Hackney recognised that economic, social and cultural circumstances had changed, and it needed to take account of Central Government initiatives. It produced Working Draft Policies for public consultation in 1999 and, importantly, it proposed a new Policy – E6 (D1), that would apply to facilitate mixed-use development, so long as certain criteria were met, in the city fringe area south of Old Street, including Holywell Lane. The review said that the concentration on manufacturing

employment in the South Shoreditch area was now out of date, and that the overall aim was to emphasise the mixed-use nature "for now and the future", as opposed to the historic emphasis on industrial employment functions. It acknowledged that local policy context was changing, demand for mixed land uses was not abating, and the status of the defined employment area was increasingly coming into question. Mr Fennell acknowledged that as the UDP review was abandoned in March 2000, so that it never got to the public consultation stage, the document had limited formal weight. However, he said, it was nevertheless indicative of the council's recognition that its policies in the area of the subject property were, indeed, in need of updating.

11. The effect of these changes was to give the council a platform for determining applications in South Shoreditch in a more flexible manner, and a degree of diligent research would have revealed a number of approvals for the redevelopment of employment land and buildings for mixed use purposes that included residential and live/work elements. Mr Fennell produced a schedule of 14 approvals that, he said, clearly indicated that mixed-use developments had become acceptable by December 2001. Furthermore, whilst he understood that the question of the claimant's application for a certificate of appropriate alternative development under section 17 of the 1990 Act in 2004 was a matter of dispute between the parties, it was an indisputable fact that the technical planning assessment clearly considered that the principle of residential development would be supported on the site to contribute to the regeneration of the area whilst at the same time preserving the pre-existing employment use. Indeed, the recommendation in the officer's report was that, were the land not earmarked for compulsory acquisition, planning permission would have been granted for the claimant's proposed mixed-use scheme. Also, he said, there would be no requirement for a 12 month marketing period under policy E5 or the proposed E6 (D1). No employment space would be lost – indeed the proposal was for the employment floor space to be increased from 340 sq m to 493 sq m.

12. Mr Fennell said that the proposals would not have been in conflict with any of the adjoining or adjacent uses, introducing as they would a balance of 60% employment and 40% residential or, if live/work were to be allowed on the first floor, a 50/50 employment/residential split. A four-storey plus basement development would also not have been out of scale with the surrounding properties, and would have been compatible with the overall street scene. The core employment objective of the adopted UDP would not be compromised, especially as the council recognised that the 1988 GPDO enabled change of use from Class B2 to Class B1 without the need for planning permission. To resist the proposal, which should be seen as a qualitative gain, would be neither realistic in December 2001, nor consistent with new and emerging Government policy. The subject property was run down and in dilapidated condition, and did not constitute optimum use of the site. Thus, a prospective purchaser would confidently have expected to be successful if a planning application for a scheme like that proposed by the claimant were made.

13. Mr Fennell said that two planning appeal decisions at Westland Place, Nile Street and 5 Garden Walk, in each of which permission had been granted for mixed use developments, added weight to his views, especially as the claimant's proposals were for a higher employment content than previously existed. As to other comparables referred to by Mr Rowell, he thought that none of them had any better chance of achieving planning consent. In cross-examination, Mr Fennell said that, in accordance with his instructions, he had only considered the question

of the claimant's proposed scheme but, in his view, other alternatives, including solely B1 commercial uses, would have had an equal chance of success. He placed no weight on the fact that a retrospective planning application to regularise the residential use that was occurring at the adjacent building, Wich House, 59-63 Holywell Lane, had been refused, since he took the view it had been an ill-conceived application, submitted by one of the tenants, and was doomed to failure from the start. He accepted that, whereas he was looking at an outline application, the fact that the subject property adjoined a listed building (196 Shoreditch High Street), when it came to detailed considerations of final design, some care would be needed, but in his view that would not cause any particular constraints. Indeed, he said, a new 4-storey building would be more compatible with the surrounding properties than the pre-existing single storey unit.

14. Mr Rowell said that he had 10 years post-qualification experience in town and country planning matters, specifically in respect of strategic transport planning, the application of policy to development proposals, and development control issues. His firm, Adams Hendry Consulting, had been advising TfL on environmental issues in relation to the East London Line Extension since 1994. Mr Rowell produced a report, and three supplemental statements. He set out the national and regional policies and guidance that he and Mr Fennell agreed would be material considerations (under section 54A), including PPG 1 and PPG 3, and those policies within the statutory development plan that would apply to the subject property. He said that the introductory section of the UDP made clear that its policies were intended to be effective for between 5 and 10 years, but it also acknowledged that:

> "the Council recognises that circumstances change and there will be a need to review the plan and keep it up to date. The Council will consider the need to make interim changes or undertake a full review of the plan in the light of changing planning trends and issues which affect the use and development of land." [UDP Introduction para 24].

15. However, Mr Rowell said, the review that was begun in 1999 was abandoned after a very short time, before any public consultation had taken place. As para 48 of PPG 1 made clear, the weight to be attached to emerging development plan policies depended on what stage had been reached, increasing as the policy review progressed. In his view, whilst in principle the proposals in that review could not be entirely dismissed as material considerations, in practice no significant weight should be attached to it. The relevant policies and text of the extant UDP would, therefore, have been of primary significance for development control purposes. He said that his analysis of those general policies led him to conclude that given the property's location within the South Shoreditch Defined Emloyment Area (SSDEA), favourable consideration would have been given to proposals for continued employment use and redevelopment. However, the more specific policies relating to the South Shoreditch Inset Area (SSIA), and the SSDEA sub-area, led him to believe that the failure in the claimant's proposed scheme to retain any element of B2 would have meant that it was contrary to adopted policy. The proposed residential use also contravened a number of policies, to the extent that an application at the valuation date would, in his view, undoubtedly have been refused.

16. In respect of development control decisions that he considered relevant to the subject property, he said that the refused application in 2000 for the change of use from general industrial/warehouse use to live/work units and the construction of a roof terrace at the adjoining Wich House, 59-63 Holywell Lane, was highly relevant. Although the exact extent

of the proposed live/work content was not clear, it appeared from the Delegated Decision Report that it was only the 3rd floor for which the change of use was required. The reasons for refusal were that it would have resulted in a reduction of employment generating space, and the Decision Report had said that there was no justification for permitting residential development in a DEA contrary to policy E2. The officer considered that the property, as existing, was an appropriate size and in an appropriate location for B2 use, and there were no special circumstances to warrant a departure from Policy SSH 3 (retention of existing B2 uses). Live/work units, being synonymous with residential uses, were also not appropriate in close proximity to B2 uses. Mr Rowell said that precisely the same circumstances applied at the subject property, and residential use there would also have been inappropriate in this location. He accepted in cross-examination, however, that, as Mr Fennell had shown in his schedule of consents, permission had been obtained in 1997 for continued use as live/work units at 55 Holywell Lane, and that the first reason for refusal on Wich House – loss of employment space – would not have applied to the subject property.

17. Referring to 196 Shoreditch High Street, at which consent had been obtained in 1997 for conversion of the upper floors to residential flats, Mr Rowell pointed out that an informative in the decision notice made it clear that whilst residential use would not normally be permitted, an exception had been made to enable a listed building to be restored.

18. In his second supplementary report, Mr Rowell said that he had considered all of the comparable properties upon which Mr Todd had relied for the purposes of valuation. All of these had been sold without planning consent, and in every case, he said, whilst he had only had time to form a general conclusion, he thought the properties would have had a better chance of obtaining permission for a development that included a residential element than the subject property would have done at the valuation date. He said that whilst, on the face of it, the fact that the comparable properties did eventually obtain consents that incorporated residential uses might appear to give an indication of a council's general approach, each application had to be considered on its own individual merits, and the background facts would be the determining factor. This, he said, was precisely what happened in respect of the two appeal decisions.

19. In the Westland Place appeal the inspector considered that, as the UDP contained no policies concerning mixed uses and the need to reduce reliance on the private car, it was out of date and, having concluded that he could attach little weight to the emerging UDP draft revisions, indicated he proposed to give more weight to advice in PPG 1, 3, 4 and 13. However, Mr Rowell said that, whilst those guidance notes encouraged local authorities to achieve or facilitate mixed-use developments, they clearly did not give blanket approval to all potential mixed-use schemes that might override policy and other material considerations. The inspector had referred to a number of other developments, permissions and appeal decisions that were mentioned at the inquiry and had concluded that none of them were directly relevant to the subject of the appeal he was hearing, saying that the most they did was to serve as a general guide to how the council and others had approached mixed-use proposals, and that the case before him had to be considered on its own merits. The circumstances in the 5 Garden Walk appeal were also very different from those relating to the subject property, and Mr Rowell said that, therefore, the appeal decisions were of little assistance.

20. On the basis of all the evidence and his findings, Mr Rowell concluded that if he were advising a potential purchaser of the claimant's property he would have to say that, in December 2001, there would have been little likelihood of achieving planning permission for the mixed-use scheme as proposed. In cross-examination he accepted that there was some likelihood that planning permission for pure commercial (B1) use might have been achieved, but in his view the chances were no greater than 60–70%, as the local authority might have been reluctant to lose the existing B2 use, even though no such use was occurring at the relevant time. He acknowledged that the claimant's scheme would not result in the loss of any employment space, and in fact allowed for an increase in that element. He also agreed that there was no evidence locally that proposals for redeveloping B2 uses with B1 were being refused, and neither were applications for mixed-use schemes incorporating residential, other than the one relating to Wich House, 59-63 Holywell Lane where, he accepted, the applicant had not helped his own case.

Planning: the abortive section 17 certificate application

21. On 24 November 2003 Calfordseaden made a planning application on behalf of Spirerose. It sought outline permission for "Mixed development of basement and ground floor B1 space with 3 floors of residential space above." That a planning application should have been made is obviously surprising since LUL had entered on the land under their statutory powers some two years previously. Surprisingly also, the council's planning officer recommended the grant of permission, and the council granted planning permission. Their obvious error in doing so was corrected when the permission was quashed by consent in judicial review proceedings brought by LUL.

22. The council then proceeded to treat the planning application as an application for a section 17 certificate, although no notice of such application had been served on the acquiring authority. In his report to the planning committee the officer said that the application was a theoretical one for development that would not be built if the application were granted. He went on:

> "The proposal will therefore be assessed against the Unitary Development Plan Policies, the national polices, relevant PPG's and other material considerations at the time of December 2001 (the date that the CPO was made)."

23. The officer was plainly in error in treating December 2001 as the relevant date for consideration under section 17 of the question whether planning permission would have been granted. The relevant date was the date in the autumn of 1993 when statutory notice was first published of the making of the London Underground (East London Line Extension) Order under the Transport and Works Act 1992: see section 22(2)(a) of the 1961 Act and *Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment* [2000] 2 AC 307. After an evaluation of the proposal against the policies the officer recommended that a section 17 certificate for the development should be given. The council resolved to issue the certificate, but in the event no certificate was issued. The claimant did not appeal under section 18 nor did the acquiring authority itself at any time make application, as it could have done, for a section 17 certificate.

The point of law: assumption of planning permission or hope value only

24. The difference between the parties on the correct approach in law in relation to the prospect of the grant of planning permission was fundamental, and we will deal with this before setting out the conclusions that we have reached on the planning evidence. For the claimants, Mr Nardecchia submitted that, if the evidence showed that at the valuation date there was a reasonable prospect of planning permission being granted in the no-scheme world, such permission was to be assumed for the purpose of valuing the subject land. Mr Barnes, for the acquiring authority, said that, in the absence of an actual planning permission or a permission that was required to be assumed under Land Compensation Act 1961, the prospect at the valuation date of planning permission being granted could only be reflected in hope value. Curiously this important issue in the law of compensation does not appear to have arisen previously in such starkly defined terms.

25. Mr Nardecchia's contention was that the assumption of such planning permission as might reasonably have been expected in the no-scheme world was properly to be made in application of the *Pointe Gourde* principle; and that *Melwood Unit Pty Ltd v Commissioner of Main Roads* [1979] AC 426 and *Jelson Ltd v Blaby District Council* [1977] 1 WLR 1020 provided the authority for this. Alternatively, he said, basing himself on *Jelson v Blaby*, such permission was to be assumed by virtue of section 9 of the 1961 Act.

26. In his very extensive and helpful submissions, Mr Barnes advanced what he said were eleven reasons why the contention of the claimant, that compensation was to be assessed on the basis of such planning permission as could reasonably have been expected to be granted in the no-scheme world, could not be correct. When examined these reasons are, we think in reality three, or at any rate they fall into three categories: firstly that the contention runs counter to established principles of valuation; secondly that it is inconsistent with the statute, which makes exhaustive provision in relation to planning assumptions; and thirdly that it is contrary to authority.

Planning assumption issue: statutory provisions

27. The 1961 Act contains in sections 14 to 16 provisions that lay down specific assumptions as to planning permission that are to be made in assessing compensation under the Act. These are supplemented in Part III of the Act by provisions dealing with certificates of appropriate alternative development. The fundamental question that arises is whether these statutory provisions are to be treated as exhaustive in terms of the assumptions as to planning permission that can be made, as Mr Barnes contended, or whether, and, if so, to what extent, assumptions that are not derived from the provisions themselves can also be made.

28. In section 14 the following provisions are particularly to be noted:

> "(1) For the purpose of assessing compensation in respect of any compulsory acquisition, such one or more of the assumptions mentioned in sections fifteen and sixteen of this Act as are applicable to the relevant land or any part thereof shall

(subject to subsection (3A) of this section) be made in ascertaining the value of the relevant interest.

(2) Any planning permission which is to be assumed in accordance with any of the provisions of those sections is in addition to any planning permission which may be in force at the date of service of the notice to treat.

(3) Nothing in those provisions shall be construed as requiring it to be assumed that planning permission would necessarily be refused for any development which is not development for which, in accordance with those provisions, the granting of planning permission is to be assumed.

(3A) In determining –

(a) for the purpose referred to in subsection (1) of this section whether planning permission for any development could in any particular circumstances reasonably have been expected to be granted in respect of any land; or

(b) whether any of the assumptions mentioned in section 16 of this Act (but not section 15) are applicable to the relevant land or any part thereof,

regard shall be had to any contrary opinion expressed in relation to that land in any certificate issued under Part III of this Act."

29. Section 15 lays down assumptions of planning permission for the acquiring authority's own proposed development (subsection (1)) and for development falling within a class specified in the Third Schedule to the Town and Country Planning Act 1990 (subsection (3)). Subsection (5) provides as follows:

"(5) Where a certificate is issued under the provisions of Part III of the Act, it shall be assumed that any planning permission which, according to the certificate, would have been granted in respect of the relevant land or part thereof, if it were not proposed to be acquired by any authority possessing compulsory purchase powers would be so granted, but, where any conditions are, in accordance with those provisions, specified in the certificate, only subject to those conditions and, if any future time is so specified, only at that time."

30. Section 16 specifies assumptions of planning permission that are to be made for development that is in accordance with the provisions of the development plan (in language that relates to the old-style development plans which were replaced under the Town and Country Planning Act 1968). If the land is allocated for development or is within a comprehensive development area, permission is to be assumed for development for an allocated purpose provided that planning permission "might reasonably have been expected to be granted" for that development "if no part of the relevant land were proposed to be acquired by any authority possessing compulsory purchase powers" (see subsections (2), (3), (4) and (7)). In the case of development for which the land is defined in the development plan for development of a specified description permission for such development is to be assumed without qualification (subsection (1)). The system of defining sites and allocating land, which applied to development plans prepared in accordance with section 5(2) of the Town and

Country Planning Act 1947, was abolished by the 1968 Act, so that section 16 has for a long time badly needed bringing into conformity with new-style development plans: see *Purfleet Farms Ltd v Secretary of State for the Environment, Transport and the Regions* [2002] RVR 203 at paras 37 and 38.

31. Section 17 contains provisions relating to certificates of appropriate alternative development. Where an interest in land is proposed to be acquired compulsorily both the landowner and the acquiring authority are entitled to apply to the local planning authority for such a certificate (subsection (1)), but, if reference to the Lands Tribunal has been made, the consent of the other party or the leave of the Tribunal is required (subsection (2)). It is to be noted that until the Planning and Compensation Act 1991 application for a section 17 certificate could only be made where the land was not shown for residential, industrial or commercial development in the development plan. The 1991 Act amended section 17 so as to remove this limitation, and subsection (3) of section 14 was amended and subsection (3A) was inserted.

32. An application under section 17 must "state whether there are, in the applicant's opinion, any classes of development which, either immediately or at a future time, would be appropriate for the land in question if it were not proposed to be acquired by any authority possessing compulsory purchase powers and, if so, shall specify the classes of development and the times at which they would be so appropriate": subsection (3)(a). The local planning authority must, applying this hypothesis, issue a certificate stating either "(a) that planning permission for development of one or more classes specified in the certificate (whether specified in the application or not) would have been granted, but would not have been granted for any other development; or (b) that planning permission would have been granted for any development for which the land is to be acquired, but would not have been granted for any other development": subsection (4). If permission in the authority's opinion would only have been granted subject to conditions or at a future time, the certificate under (a) must state this (subsection (5)). Section 18 contains provision for appeal by either party to the Secretary of State against the contents of a certificate or where the authority has failed to issue a certificate.

Planning assumption issue: the *Pointe Gourde* principle

33. The *Pointe Gourde* principle (as established in *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565), on which Mr Nardecchia relies, is that the compensation payable for the compulsory acquisition of land must exclude any increase in the value of the land that is wholly due to the scheme underlying the acquisition; and *Melwood* establishes that the principle also applies to any such decrease in value.

34. Sections 14 to 16 appear in Part II of the 1961 Act, which is entitled "Provisions determining amount of compensation". Sections 5 to 9 contain the general provisions. On the face of it this part of the Act was intended to provide a complete code for the assessment of compensation for the land acquired. However,

> "The courts…found themselves driven to conclude that the statutory code is not exhaustive and that the *Pointe Gourde* principle still applies. This conclusion is open to the criticism that in many instances this makes the statutory provisions otiose. This

is so, but this is less repugnant as an interpretation of the Act than the alternative." (per Lord Nicholls of Birkenhead in *Waters v Welsh Development Authority* [2004] 1 WLR 1304 at para 54)

35. The decisions to which Lord Nicholls was referring were ones in which the relationship between the principle and the provisions in section 6 of and Schedule 1 to the Act were under consideration. That section and the schedule make provision for disregarding the value attributable to development, or the prospect of development, of land other than the land acquired in a range of specified circumstances. *Pointe Gourde* was applied by the courts so as to make an equivalent assumption for the land itself in the no-scheme world. The co-existence of the section 6 code and the *Pointe Gourde* principle gave rise to problems associated with identifying the ambit of the scheme for the purpose of applying *Pointe Gourde* in a particular case, and *Waters* is now the leading case on how the principle in *Pointe Gourde* should be applied.

36. In the key part of his speech Lord Nicholls (with whom Lord Woolf CJ, Lord Steyn and Lord Brown of Eaton-under-Heywood agreed), said this:

> "61…What, then, is the purpose of this principle? Its purpose, in separating 'value to the owner' from 'value to the purchaser', is to forward Parliament's objective of providing dispossessed owners with a fair financial equivalent for their land. They are to receive fair compensation but not more than fair compensation. This is the overriding guiding principle when deciding the extent of a scheme…
>
> 63 In applying this general principle there is of course no magical detailed formula which will provide a ready answer in every case. That is in the nature of things, circumstances varying so widely. But some pointers may be useful. (1) The *Pointe Gourde* principle should not be pressed too far. The principle is soundly based but it should be applied in a manner that achieves a fair and reasonable result. Otherwise the principle would thwart rather than advance the intention of Parliament…(4) When applied as a supplement to the s 6 code, which will usually be the position, the *Pointe Gourde* principle should be applied by analogy with the provisions of the statutory code…"

37. Alone among the Law Lords Lord Scott of Foscote saw the *Pointe Gourde* rule, as Lord Brown put it at para 131, "as no more than a misconceived accretion to the legislative scheme which itself, therefore, ought to be disregarded." For his part Lord Brown set out in a section of his speech headed "Has the *Pointe Gourde* rule survived the 1961 Act?" his reasons for concluding that the rule had become entrenched and that the case law on it should continue to be applied.

38. It is clear, therefore, from *Waters* that the *Pointe Gourde* principle is properly to be applied as an adjunct to the statutory code. This is clearly established in relation to the provisions in section 6 and Schedule 1, but is it relevant to planning assumptions? and is it properly to be used as an adjunct to the provisions of sections 14 to 16? The answer to both these questions is, in our judgment, yes; and the authorities are, for the first, *Melwood* and, for the second, *Jelson v Blaby*.

Planning assumption issue: *Melwood* and *Jelson v Blaby*

39. In *Melwood* a developer had acquired 37 acres of land, a strip of which was subject to an expressway proposal that would have the effect of severing the land, leaving 25 acres to the north and smaller area to the south. He sought planning permission for development of the 37 acres as a drive-in shopping centre, but was granted permission on the 25 acres only. The land for the expressway was compulsorily acquired, and compensation was awarded on the basis that the land acquired and the land to the south never had any potential as part of a shopping centre. The Judicial Committee of the Privy Council held that this was wrong. It accepted that "but for the expressway project and its impact on the 37 acres an application to develop the whole area for a drive-in shopping centre with ancillary car parking would have been granted by the registration board, including the resumed land and the south land" ([1979] AC 426 at 433F). Giving the judgment of the Board, Lord Russell of Killowen said (at 434 C-E):

> "Under the principle in *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands* [1949] A.C. 656 the landowner cannot claim compensation to the extent to which the value of his land is enhanced by the very scheme of which the resumption forms an integral part: that principle in their Lordships' opinion operates also in reverse. A resuming authority cannot by its project of resumption destroy the potential of the whole 37 acres for development as a drive-in shopping centre, and then resume and sever on the basis that that destroyed potential had never existed. Moreover, in their Lordships' opinion the principle remains applicable in a case such as the present, notwithstanding that planning permission had not been given for the whole 37 acres and would not have been given, when the lack of such permission was manifestly due to the expressway project, and it is established that, without the expressway project, such planning permission would have been given for the whole 37 acres. To hold otherwise in this case would enable the acquiring authority to inflict by its project the same injustice at one remove."

40. *Melwood* thus establishes that *Pointe Gourde* is relevant to planning assumptions. Indeed it is clear, in our view, that the principle underlies the provisions relating to planning assumptions in the 1961 Act. The Law Commission noted this in paras D.63-D.65 on pages 191-2 of their report "Towards a Compulsory Purchase Code: (1) Compensation" Law Com No 286, December 2003. But *Melwood*, a case from Queensland, was not concerned with the use of *Pointe Gourde* as an adjunct to the provisions of sections 14 to 16 of the 1961 Act. The case that provides authority on that matter is *Jelson v Blaby*.

41. *Jelson v Blaby* was an appeal to the Court of Appeal from the Lands Tribunal on a claim for compensation for the deemed compulsory purchase of land following a purchase notice. The subject land had some years before been shown as part of a proposed ring road in the development plan. The land on either side of it was shown for residential development, and this residential development was in due course carried out. The road proposal was eventually abandoned and the council was forced to acquire the strip of land that had been reserved for it pursuant to a purchase notice. The claimant sought a section 17 certificate for residential development. On appeal the Minister issued a nil certificate. He did so on the basis that the correct time at which to consider whether planning permission might reasonably have been expected to be granted was the date of the deemed notice to treat and at that time, after the land on either side had been developed, the land was incapable of development. The Minister's

decision was challenged, but his approach was held to be correct by the Court of Appeal in *Jelson Ltd v Minister of Housing and Local Government* [1970] 1 QB 243. There was agreement between the parties on the amount of compensation that would be payable on the assumption that the road scheme underlying the acquisition must be ignored and that, if there had never been the proposal for the road, the land would have been developed as part of the neighbouring estate. The dispute was as to whether such assumption was required. The claimant founded its case on *Pointe Gourde* and on section 9 of the 1961 Act. In the Lands Tribunal ([1974] RVR 406) the Member (V G Wellings QC) said (at 423):

> "It appears to me that if the *Pointe Gourde* principle does not require a diminution in value entirely due to the scheme underlying the acquisition to be left out of account, section 9 of the Act of 1961 provides the analogous principle … in rather wider terms than the *Pointe Gourde* principle is usually expressed."

He found in favour of the claimant. He concluded that the scheme underlying the acquisition was the road proposal, notwithstanding that it had been abandoned before the deemed compulsory acquisition, and he accepted the valuation that was based on the assumption that the land would have been developed as part of the adjoining estate. He did not think it necessary to base his decision on *Pointe Gourde*.

42. In the Court of Appeal Lord Denning MR, with whom Stephenson and Waller LJJ agreed, noted that the claimant relied both on *Pointe Gourde* and on section 9, and he said at 1027F:

> "The position is, to my mind, that there is depreciation here which is covered both by the *Pointe Gourde* principle and by section 9 of the Land Compensation Act 1961."

43. Since none of the statutory assumptions as to planning permission could have applied on the facts of the case so as to give rise to an assumption of permission for residential development, it is necessarily implicit in this conclusion that, applying *Pointe Gourde*, it was appropriate to assume the grant of such planning permission. It seems to us that this authority provides the conclusive answer to Mr Barnes's contention that only a planning permission which was in force at the valuation date or is to be assumed under the statutory provisions in sections 14 to 16 can be taken into account.

Planning assumption issue: section 14(3)

44. Mr Barnes's contention on section 14(3) was that the assumption of planning permission under *Pointe Gourde* was either inconsistent with the provision or sat very uneasily with it. He relied on a dictum in *Williamson v Cambridgeshire County Council* (1977) 34 P & CR 117, a decision of this Tribunal (Sir Douglas Frank QC, President). At 122 the President said:

> "It seems to me that where a claimant comes before this Tribunal saying, as is said here, that permission could reasonably have been expected to have been granted, on the date of notice of entry for a development, then the appropriate course is to apply for a [section 17] certificate…Section 14(3) is not intended to require the Lands Tribunal to undertake the sort of exercise which has been imposed on me in this case. On the contrary it is directed to the hope of getting a planning permission sometime in the future and not the realisation of that hope by the date of the notice of entry."

45. It does not appear that *Jelson v Blaby* was cited in that case, and it is at least doubtful whether the President would have expressed himself in this way if it had been. Subsection 14(3) provides that nothing in the sections 15 and 16 is to be construed as requiring it to be assumed that planning permission would necessarily be refused for any development for which, in accordance with those provisions, planning permission is to be assumed. For our part, we see no conflict or tension between this provision and the *Pointe Gourde* planning permission assumption. If it is appropriate to assume the grant of planning permission under *Pointe Gourde*, section 14(3) in our judgment allows this to be done.

46. Mr Barnes said that this provision was the reiteration of the aspect of the principle of equivalence under which the value of the hope of obtaining planning permission must be taken into account since it is inherent in the open market value of the land. He said that, clearly, the expectation of obtaining a planning permission is to be judged in the no-scheme world. Expressed in this way, it is evident that a claimant's entitlement to rely on hope value as part of the open market value of the land is derived from the *Pointe Gourde* principle: if the scheme has deprived him of the expectation that he would have had in the no-scheme world of the hope of obtaining planning permission, any resulting diminution in value of the land is to be left out of account. That is essentially how Mr Barnes puts it. We agree that it is correct to deal with hope value on this basis. What we do not understand is why the effect of the principle should be treated as being confined to hope value. Indeed, if in the no-scheme world planning permission would have been granted on or before the valuation date, to assume that permission had not been so granted and that the claimant only had a hope that it might be granted would, it seems to us, clearly conflict with the principle of equivalence.

47. In our judgment, section 14(3) and the other statutory provisions do not carry the implication that the claimant may not seek compensation on the basis of such planning permission as would have been granted in the no-scheme world other than as expressly provided for in sections 15 to 16. In addition we think that the first part of section 14(3A) – "In determining ... for the purpose referred to in subsection (1) of this section whether planning permission could in any particular circumstances reasonably have been expected to be granted in respect of any land ..." – is consistent with compensation being assessed on this basis in the absence of any statutory planning assumption, and we note what was said about this in *Pentrehobyn Trustees v National Assembly for Wales* [2003] RVR 140 at paras 77 to 79.

48. In practical terms it is also to be borne in mind that a claimant who wishes to rely on hope value, and an acquiring authority that wishes to oppose such reliance, will in all probability seek to call the same planning evidence before the Tribunal as would be required if the matter to be determined was whether planning permission would have been granted for the development in question. One difference, however, is that, in determining hope value, the Tribunal does not simply have to evaluate such evidence but it has to determine also what the market would have made of it at the valuation date: see *Stayley Developments Ltd v Secretary of State* [2000] 1 EGLR 167. In that sense, the hope value inquiry, with this added dimension, could be an even wider one. As far as valuation is concerned, the Tribunal may be invited by the parties to determine the value of the land with planning permission and then to make some deduction from this to reflect the fact that there was no planning permission but only the hope of one – an essentially speculative exercise; or, as it was asked to do in this case by the acquiring authority on the basis of Mr Todd's evidence, to evaluate a number of comparables in which the price appeared to include an element of hope value and reach a conclusion in the

light of this on the value of the subject land. This latter approach – seeking to identify the amount of hope value in comparable transactions – is difficult and speculative. On either basis the task of the Tribunal when evaluating hope value in such a case as this is unlikely to be easier, and may well be more difficult, than the exercise from which Sir Douglas Frank QC recoiled in *Williamson*.

Planning assumption issue: basic valuation principles

49. The two principles of valuation on which Mr Barnes relied were the presumption of reality and the principle of equivalence. We do not think that either of these provides any assistance in resolving the issue between the parties when regard is had to the *Pointe Gourde* principle. As to the presumption of reality, Mr Barnes said that nearly all valuation of land required a hypothesis that the land was being sold or let on some specific date; and the presumption of reality, he said, demanded that, unless expressly or impliedly required by the prescribed terms of the hypothesis, there should be no departure from reality. There is no dispute about the existence of the principle. However, if the matter is addressed in Mr Barnes's terms, the crucial question is whether the proviso "unless expressly or impliedly required by the prescribed terms of the hypothesis" applies. The circumstance in which the land falls to be valued is its compulsory acquisition. Its market value in the real world may not have been the same as it would have been if there had been no proposal to acquire it compulsorily or if the project underlying its acquisition had never existed or had been cancelled. It is clear that reality, as represented by the actual state of affairs at the valuation date, may well need to be departed from in valuing the land if the claimant is to receive fair compensation. This is what is achieved by applying the *Pointe Gourde* principle.

50. Under the second principle relied on by Mr Barnes, the principle of equivalence, a claimant is entitled to fair compensation but not to a greater amount than his loss (see *Horn v Sunderland Corporation* [1941] 2 KB 26 per Scott LJ at 49; *Director of Public Buildings and Land v Shun Fung Ltd* [1995] AC 111, per Lord Nicholls of Birkenhead at 125). It is in order to deal with the fact that compensation assessed on the basis of the real world value of the land at the date of acquisition would not represent fair compensation but might be more or less than the claimant's loss that the statutory rules and assumptions were enacted. And the courts have recognised that the principle in *Pointe Gourde* is properly to be applied so as to supplement the statutory rules and assumptions in order to achieve this objective: see, eg, *Waters*, per Lord Nicholls at para 63. Mr Barnes's contention that it would offend the principle of equivalence if compensation were to be based on the assumption of the grant of planning permission rather than the hope of it is, we think, fallacious. As we have said, if the conclusion of the Tribunal were that in the no-scheme world permission for development would have been granted at the valuation date, it would, or could, offend the principle of equivalence if compensation were not to take account of that conclusion.

Planning assumption issue: cases relied on

51. The third principal contention advanced by Mr Barnes – that the assumption of planning permission under *Pointe Gourde* was contrary to authority – was based primarily on the Court of Appeal decision in *Porter v Secretary of State for Transport* [1996] 3 All ER 693. In that

case land had been acquired for a road, and there was a claim for compensation for the value of the land taken and for severance and/or injurious affection of other land retained by the claimant. The claimant was granted on appeal under section 18 of the 1961 Act a certificate of appropriate alternative development in respect of the land acquired. The basis of the decision of the Secretary of State was that, in the absence of the actual scheme, a road would have been built along a different alignment, and in these circumstances the land acquired would have been suitable for residential development. (It is to be noted that the land fell to be valued at a time before the 1991 Act, following the decision in *Margate Corpn v Devotwill Investments Ltd* [1970] 3 All ER 864, added subsections (5) to (7) of section 14 so as to exclude a claim on this basis by imposing the assumption that no road would be built to meet the same need as the scheme road.) Before the Lands Tribunal the claimant sought compensation for severance and/or injurious affection on the same basis, ie that in the absence of the actual scheme a road would have been built along a different alignment and the retained land would in consequence have received planning permission for residential development. The Lands Tribunal (Judge Marder QC, President) held ((1995) 70 P & CR 82), acceding to the contention of the claimant, that the acquiring authority was estopped from advancing evidence to show that the conclusions of the Secretary of State on the section 18 appeal should not be followed.

52. The Court of Appeal allowed the acquiring authority's appeal on the two grounds advanced on their behalf by Mr Barnes QC. The first (on which Peter Gibson LJ dissented) was that the planning judgment involved in the decision on the section 18 appeal was not of the character that could form the basis of an estoppel per rem judicatam. The second reason, the one that is material for present purposes, was that the issue determined by the Secretary of State was not the same as the issue that the Lands Tribunal had to determine. Stuart-Smith LJ, who gave the leading judgment, said this ([1996] 3 All ER 693 at 703j – 704f).

> "I turn to consider the second question, namely whether the issue determined by the Secretary of State is the same as that which has to be determined by the Lands Tribunal. Mr Barnes submits that it is not. What the Lands Tribunal has to assess is the diminution in value, if any, to the land of the respondents retained by them. Consideration of the open market value of a piece of land will involve an assessment of the chances of planning permission being granted for it, together with such questions as the demand for such development. The assessment of the prospect of planning permission no doubt depends to a large extent on where an alternative bypass would have gone if it had not followed the yellow route. To this extent the questions before the Lands Tribunal and the Secretary of State are similar; but in my view they are not the same. The point can best be illustrated by taking an example where the facts may be somewhat different from those which in fact existed. Suppose there were two alternative routes to the route chosen, one to the east of it and one to the west. The two alternatives might be very evenly balanced. But the Secretary of State might decide that the scales just tipped in favour of the eastern route, with the result that he concludes that planning permission would have been granted up to that alternative route and this would include the claimants' land. Because of the assumptions required to be made in relation to the acquired land, this finding is the equivalent of a certainty that planning permission would be granted in relation to that land. Mr Barnes also submits that the finding as to the position of the alternative route must also be regarded as a certainty, because he says it is a finding of hypothetical fact. It is only necessary for the Secretary of State to find the position of the alternative on a balance of probability; but the Lands Tribunal have to assess the extent of the chance, which in the example given is only just better than even.

> Where a court or tribunal has to decide what would have happened in a hypothetical situation which does not exist, it usually has to approach the matter on the basis of assessing what were the chances or prospect of it happening. The chance may be almost a certainty at one end to a mere speculative hope at the other. The value will depend on how good this chance is. Where, however, the court or tribunal has to decide what in fact has happened as an historical fact, it does so on balance of probability; and once it decides that it is more probable than not, then the fact is found and is established as a certainty. This distinction is well illustrated by *Davies v Taylor* [1972] 3 All ER 836, [1974] AC 207 and *Allied Maples Group Ltd v Simmons & Simmons (a firm)* [1995] 4 All ER 907, [1995] 1 WLR 1602.
>
> It would be unnecessary for the Secretary of State to evaluate the chance of the eastern route being the preferred alternative route in the event that the actual route was not chosen, provided it was more than 50%; but the Lands Tribunal would be concerned in assessing value to evaluate the chances of this happening more precisely."

53. At 706 d-e, Peter Gibson LJ said that on the second question ("in the issue of whether there would have been an alternative bypass on the line of the preferred route the same as that to be determined by the Lands Tribunal?") he agreed with Stuart-Smith LJ for the reasons that he had given. Thorpe LJ at 706b said that he accepted Mr Barnes's submissions on both issues.

54. Mr Barnes relied on *Porter* for his submission that the question of planning permission, as he put it in the language of theoretical physicists, is probabilistic, not deterministic. Thus a widow, separated from her husband at the date of his death in a road accident and suing under the Fatal Accidents Acts 1846-1959, would be entitled to damages that reflected the chance (in percentage terms) that a reconciliation would have been effected if her husband had not died (*Davies v Taylor* [1974] AC 207). And a claimant who had lost his chance to sue to recover £1m because his solicitors had negligently allowed the limitation to expire without issuing proceedings would recover in damages not £1m, but an amount that reflected the chance of recovering this amount. It is, happily, however, unnecessary for us to explore the complex area of damages for loss of a chance (and we are aware that there is substantial further authority since *Davies v Taylor*) because it seems to us that the simple answer to Mr Barnes's contention is that the questions before a tribunal that has to determine compensation, like the questions before a court where damages are sought in tort or contract, are (to use his terms) deterministic where they relate to matters up to and including the time of injury and are probabilistic thereafter. The injury, in a claim for compensation, is the taking of the land, and compensation is assessed as at the date of entry. As to what had happened or what would have happened by that date if the land had not been taken the questions are deterministic. As to the prospects of things occurring after that date the question are probabilistic. Assumptions arising under the statute or *Pointe Gourde* are to be determined as facts. In applying section 6 and Schedule 1 or *Pointe Gourde* the tribunal determines what would have happened in the no-scheme world. It does not attribute a percentage chance to a particular potential event and seek somehow to apply this percentage to the value that the land would have had if the chance had been a certainty.

55. It is to be noted that neither *Jelson v Blaby* nor *Melwood* was cited in *Porter*, and on one view it could be said to be inconsistent with those decisions. *Porter* was, however, concerned

with a claim under section 7 of the Compulsory Purchase Act 1965 for severance and/or injurious affection of the retained land. The statutory assumptions under section 6 or sections 14 to 16 of the 1961 Act do not apply to the assessment of compensation on such a claim, and the role of *Pointe Gourde* may accordingly be different. The conclusion we have reached is that, until the Court of Appeal has resolved any conflict that there may be between *Jelson v Blaby* and *Melwood* on the one hand and *Porter* on the other, *Porter* should be regarded as confined to considerations that arise on claims under section 7 and as having no application to the question of planning assumptions in relation to the land acquired.

56. Mr Barnes also relied on a passage in the speech of Lord Hope of Craighead in *Fletcher Estates*. The issue in that case was whether, for the purposes of determining an application for a certificate of appropriate alternative development under section 17, the relevant policies and facts should be viewed on the basis that the scheme had never been conceived at all or on the basis that it had been cancelled on the relevant date (the time of the notice to acquire the land). The House of Lords held that the cancellation assumption was the right one. The passage on which Mr Barnes relies is at [2000] 2 AC 307, 325A-D, where Lord Hope (with whose speech the other Law Lords agreed) said:

> "I can find nothing in the overall scheme of the Act which requires the question whether planning permission would have been granted for any classes of alternative development to be determined by reference to events which may or may not have happened in the past if the proposal had not come into existence."

57. The observation in this passage is one that is clearly important in the context of the issue that we are now addressing, particularly since we note that counsel for the appellant (Mr Robin Purchas QC) is reported (at 310C) as having submitted as follows:

> "The purpose of section 17 of the Act of 1961 (as originally enacted) was, in conjunction with the obligation to include development value in the assessment of compensation, to provide a procedure for the determination *by the planning authority* (as opposed to, for example, the Lands Tribunal) consistently with the *Pointe Gourde* principle of the question what planning permission would have been granted in the non-acquisition world."

Moreover in summarising the statutory framework Lord Hope, having quoted section 9 of the 1961 Act (which provides that no account is to be taken of any depreciation which is attributable to an indication of a proposal to acquire), said this (at 315E-G):

> "Applying the *Pointe Gourde* principle…the reverse situation is regulated by common law. The compensation cannot include an increase in value which is due to the scheme underlying the acquisition. So the whole question must be approached upon a consideration of the state of affairs which would have existed if there had been no scheme.
>
> But the value of land cannot be determined under these rules without making any assumptions about the planning permission, if any, which would have been granted for the development of the land if it were not proposed to be acquired…"

and Lord Hope went on to refer to the statutory planning assumptions. He did not refer to any assumption of planning permission to be determined by the Lands Tribunal pursuant to *Pointe Gourde* of the sort suggested by Mr Purchas.

58. Having, at the end of his speech, made the observation on which Mr Barnes relies, Lord Hope went on:

> "It may be, as Mr. Ouseley suggested, that these wider issues can be raised under section 9 of the Act when the amount of the compensation which is to be paid for land which is to be taken compulsorily is being assessed by the Lands Tribunal: see *Jelson Ltd. v. Blaby District Council* [1977] 1 W.L.R. 1020, in which Jelsons were held to be entitled to the full economic value of the land which had been taken from them disregarding the effects of the scheme under section 9. But that is not a matter which your Lordships need to resolve in this case."

59. We can see an argument that Lord Hope in these passages must be taken to have rejected any assumption of planning permission being made under *Pointe Gourde* independently of the statutory provisions in sections 14 to 16 and, possibly, section 9. However, in the absence of express disapproval of *Jelson v Blaby*, that decision is binding on us; and we would for our part consider that an assumption of planning permission under *Pointe Gourde*, where that is necessary to provide fair compensation, is a proper application of the *Pointe Gourde* principle. We return to section 9 below.

Planning assumption issue: further contentions

60. Two further contentions advanced by Mr Barnes need to be addressed. The first is that, if planning permission is to be assumed under *Pointe Gourde*, the hypothetical purchaser would be able to acquire the land with the benefit of planning permission but without the costs associated with obtaining planning permission, for instance large contributions under section 106 agreements. We do not think that this is the case. If a large contribution under a section 106 agreement would fall to be made in order to obtain the planning permission to be assumed, we see no reason why this should not be brought into account in assessing compensation. This is what the Tribunal did in *Purfleet Farms* (see [2002] RVR 203 at paragraph 97), and we think that a correct application of *Pointe Gourde* would require it.

61. The other contention is that *Pointe Gourde* is a principle of valuation and not planning status, and in support of it Mr Barnes relied on *Myers v Milton Keynes Development Corpn* [1974] 1 WLR 696 and *Roberts v South Gloucestershire District Council* [2003] RVR 43. The answer to this contention is that, as the Law Commission in its report "Towards a Compulsory Purchase Code: (1) Compensation" Law Com No.286 (December 2003) p 205 n 192 points out, despite what was said by Lord Denning MR in *Myers*, in both *Jelson v Blaby* and *Melwood* "assumed permissions were treated as valuation issues under the judicial version of the no scheme rule". We do not read the judgment of Carnwath LJ in *Roberts* as expressing a contrary view.

Planning assumption issue: application of *Pointe Gourde*

62. In *Pentrehobyn* the Tribunal, after a detailed examination of the statutory provisions and relevant authorities, concluded that it was open to a claimant to rely on any planning permission that would have been granted in the no-scheme world. At [2003] RVR 140 para 79 it said that section 14(3A) must be taken to be an implied statutory acceptance of the decision in *Jelson v Blaby*, by virtue of which a claimant could rely on such planning permission as would have been granted in the no-scheme world. At para 80 it said that there was authority, which had been relied on for many years and was by implication accepted in the 1991 amendments to the 1961 Act, that a claimant could rely on any planning permission that would have been granted if the scheme had not been conceived. In spite of the fact that there was a section 17 certificate, therefore, the Tribunal went on to make a determination on what planning permission would have been granted in the no-scheme world. Similarly in *Thomas's Executors v Merthyr Tydfil County Borough Council* [2003] RVR 246, it made such a determination even though a section 17 certificate had been granted.

63. It certainly appears to have become the practice of valuers, no doubt reinforced from time to time with advice given to them on the law, to value land that has been compulsorily acquired on the assumption that such planning permission as might reasonably have been expected to be granted for its development in the no-scheme world would have been granted at the valuation date. (The practice is not, however, by any means universal, and it is to be noted that in the present case not only did the acquiring authority's valuer approach the matter on the basis of hope value rather than an assumed planning permission but the claimant's original valuer did so too.) This was the case in *Pentrehobyn*, where the acquiring authority's planning expert, on whose evidence their valuer based himself, sought to establish whether the subject land would have received planning permission by the valuation date (see paragraph 25 of that decision). Two other recent cases illustrate the practice. In *RMC (UK) Ltd v London Borough of Greenwich* [2005] RVR 140 there was agreement between the parties that, in addition to any actual planning permission or one to be assumed under section 16, any planning permission that would have been granted prior to the valuation date in the no-scheme world was to be assumed (see paragraph 37 of that decision). In *Essex County Showground Group Ltd v Essex County Council* [2006] RVR 366 there was agreement between the parties that the correct approach in valuing the land was to ask what planning permission could reasonably have been expected to be granted at the valuation date (see paragraph 24 of that decision). In each of those cases the Tribunal adopted the approach of the parties in this respect.

64. *Pentrehobyn* was decided before the decision of *Waters* in the House of Lords. *Waters* has made clear that the function of *Pointe Gourde* is to supplement the statutory procedures where this is necessary to ensure that the claimant receives fair compensation; and it emphasises that it should be applied only for this purpose and should not be extended beyond it. At para 55 Lord Nicholls said:

> "…Undoubtedly the present state of the law gives rise to serious valuation difficulties. It is unreal to require land to be valued on the basis of what would have been the position if a major development which took place years ago had not been carried out…In a recent case in the Lands Tribunal the President had to rewrite the history of Mold in North Wales over 17 years. He described this as a 'virtually impossible task': see *Pentrehobyn*…"

It is, we think, appropriate in the light of *Waters* to consider whether, to apply *Pointe Gourde* so as to permit a claimant to rely, without any limitation, on any planning permission that would have been granted in the no-scheme world, is not pressing the principle too far. *Jelson v Blaby* could be said to be authority for no more than that *Pointe Gourde* can be used to supplement the statutory provisions where those provisions, and in particular the assumption derived from a section 17 certificate, would give a level of compensation far removed from what would be fair. Under the statutory provisions the claimant in that case was only able to achieve a nil certificate under section 17 and on that basis the land was virtually valueless. That was because, at the material date for the determination of the application, the land on either side of the subject land had been developed in such a way that the land itself was rendered incapable of development. But, in the absence of the scheme underlying the acquisition, the road proposal, the land would have received planning permission for development as part of the adjacent residential development. It was obviously fair that compensation should be assessed on that basis; and it was appropriate, therefore, to make the assumption by applying *Pointe Gourde*. It is certainly arguable in the light of *Waters* that the correct approach to planning assumptions in any particular case is to apply the statutory provisions and only to proceed to introduce an assumption derived from *Pointe Gourde* if the statutory provisions would give compensation that is far removed from what would be fair.

65. Our view is that to seek to restrict the application of *Pointe Gourde* in this way is not correct. If it is accepted, as the acquiring authority accept (indeed, as they assert), that under (or, perhaps more accurately, as recognised by) section 14(3) hope value, and thus the prospect of planning permission, is properly to be determined as in the no-scheme world, we cannot see why it should be considered inappropriate to apply *Pointe Gourde* to enable compensation to be assessed on the assumption of such planning permission as would have been granted in the no-scheme world. Indeed, as we have said, to restrict compensation to a value based on hope value alone where the evidence shows that permission would have been granted would not be fair compensation.

66. One particular matter that requires consideration is whether, if planning permission is to be assumed under *Pointe Gourde,* allowance should be made in the valuation for the time required after the valuation date for obtaining permission. This was a matter of dispute between the parties. Clearly no such allowance would be required if the Tribunal's conclusion was that at the valuation date permission would have been granted. But a conclusion on the facts that planning permission would have been granted at the valuation date would necessarily require an assumption that a planning application had been made. It may be that in some circumstances it would not be right to assume that a planning application would have been made in time for it to have been determined by the valuation date. But under rule (2) in section 5 the land is to be valued as though sold in the open market by a willing seller. If the conclusion is that in the no-scheme world on the balance of probabilities planning permission would have been granted or (which, as it seems to us, is effectively the same thing) there would have been a reasonable prospect of such planning permission being granted, it is, in our judgment, realistic to assume that the hypothetical seller would have taken steps to achieve that permission before putting the land on the market. On the assumed hypothesis, therefore, there would not at the date of valuation have been a mere prospect of planning permission. There would have been a determined planning application granting permission. If there were not a reasonable prospect of permission being granted, on the other hand, the realistic assumption would be that the hypothetical seller would not have courted a refusal by making an application, so that there could at the valuation date have been some hope value. Unless there

is evidence to displace it, therefore, we think that, if at the valuation date on the balance of probabilities planning permission would have been granted for a particular development, such permission should be assumed for the purposes of valuation. In the present case, although we were referred in support of Mr Todd's hope value assessment to transactions in which land had been sold without planning permission but had later received it, we do not think that the evidence shows that a willing seller of the subject land would not have taken steps to ensure that the land had planning permission at the date of the assumed sale.

67. We note that the Law Commission's recommended Rule 14(2) covering planning permission for appropriate alternative development (see p 107 of the report) would make the general provision that in valuing the subject land, "Account shall…be taken of value attributable to…development [of the land] for which planning permission could reasonably have been expected to be granted" in circumstances specified in sub-rule (2)(b). Except that those circumstances include the assumption that the scheme was cancelled on the valuation date rather than that it had never existed (an assumption that applies for the purposes of sections 16 and 17 but not in relation to any permission assumption under *Pointe Gourde*: see *Pentrehobyn* at paras 65-80), this suggested provision reflects, we believe, the practical effect of the law as we find it to be at present.

Planning assumption issue: section 9

68. The decision of the Court of Appeal in *Jelson v Blaby* was based, as we have noted, both on *Pointe Gourde* and on section 9 of the 1961 Act, each of which was held sufficient to entitle the claimant to compensation on the basis of the value that the land would have had if developed as part of the adjoining residential estate. Mr Nardecchia's submission, which we have accepted, that if the evidence shows that at the valuation date there was a reasonable prospect of planning permission being granted in the no-scheme world, such permission is to be assumed for the purpose of valuing the subject land, was founded on *Pointe Gourde*, and we have considered it on this basis. In the alternative he also sought to base his contention on section 9, although he stressed that his preferred basis was *Pointe Gourde*. The section provides:

> "9. No account shall be taken of any depreciation in the value of the relevant interest which is attributable to the fact that (whether by way of allocation or other particulars contained in the current development plan, or by any other means) an indication has been given that the relevant land is, or is likely, to be acquired by an authority possessing compulsory purchase powers."

69. In *Fletcher Estates*, in a passage we have noted above, Lord Hope appeared to leave open for future consideration whether *Jelson v Blaby* was correctly decided in relation to section 9. Mr Barnes pointed out that in *Pentrehobyn* the Tribunal (in paras 92-95) had considered the history and function of section 9 and had concluded that it was improbable that it was intended to enable a claimant to assert that in the no-scheme world planning permission would have been granted for a particular development and to found his valuation upon this. However, *Jelson v Blaby* is authority that it does do so, and we are bound by that decision (as indeed the Tribunal in *Pentrehobyn* at para 92 said that it was). It is also the case that, if the section applies so as enable reliance to be placed on such planning permission as would have been

granted in the no-scheme world, it necessarily applies as a rule and not, as *Pointe Gourde* could be said to apply, as a matter of discretion.

Planning assumption issue: conclusions

70. We can summarise our conclusions on the planning assumption issue as follows:

(a) On the basis of the *Pointe Gourde* rule compensation may be awarded on the assumption that planning permission for development would have been granted in the no-scheme world even though no such assumption may fall to be made under the provisions of sections 15 and 16.

(b) If the conclusion of the Tribunal is that planning permission would have been granted at the valuation date, it is to be assumed, in the absence of evidence to the contrary, that the hypothetical willing seller would have applied for such permission in time for it to be granted by that date.

(c) The assumption of such planning permission under *Pointe Gourde* is discretionary, and the purpose is to ensure that the claimant receives fair compensation; but there is no requirement that it may only be made where the compensation on the statutory assumptions would be far removed from what would be fair.

(d) Whether planning permission would have been granted in the no-scheme world is to be determined by reference to the decision that a reasonable planning authority would have made. By contrast hope value is to be assessed by reference to the view that the market would have taken as to the prospects of achieving planning permission.

(e) *Jelson v Blaby* is authority that section 9 enables a claimant to rely on such planning permission as would have been granted in the no-scheme world.

Planning: conclusions

71. At the valuation date the statutory development plan was the London Borough of Hackney Unitary Development Plan, adopted in June 1995. The UDP proposals map showed the site as in part within a Defined Employment Area and in part within the line of the proposed railway. It is agreed that in the absence of the scheme the whole of the site would have been shown within the DEA. Holywell Lane was also shown as lying within the South Shoreditch Inset Area (SSIA), and specifically within the South Shoreditch Defined Employment Area (SSDEA).

72. Strategic Policy ST25 stated that the council would especially resist the loss of employment land and premises through changes of use and redevelopment. Policy E2 said that the council would give favourable consideration to employment generating development within DEAs, provided it did not conflict with policies for the SSIA, but that residential development would not normally be permitted within DEAs. Policy E5 said that any proposals resulting in a

reduction of site area or floor space used for employment-generating land uses would be resisted.

73. Strategic Policy ST27, which applied to the SSIA, stated that the council would seek to protect and enhance the mixed employment and special land-use character of the area. The text made clear that it was the council's policy to restrict residential development in the area because of the inappropriate environment and the desire not to restrict unduly the operations of local businesses. Within the SSDEA there was to be a presumption in favour of schemes that either provided or retained a proportion of Class B2 (General Industrial) floor space (policy SSH2).

74. Housing policy HO3 stated that, outside sites specifically identified for housing on the proposal map, housing would normally be permitted provided that it did not conflict with the retention of land and floor space for employment uses and that the environment of the site was acceptable. Listed building policies (of potential relevance because the subject lands adjoins the listed 196 Shoreditch High Street) stated that the council would preserve and enhance listed buildings (Policy ST8) and would not normally permit any development that adversely affected the setting of a listed buildings (Policy EQ18).

75. As is often the case with policies that are expressed in qualified terms, arguments could no doubt have been advanced in favour of the proposed development of the subject land, but the conclusion we have formed is that the effect of policies favouring B2 uses in the SSDEA and the potential incompatibility of such uses with residential development would have meant that the proposal would not have been in accordance with the employment and housing polices of the plan. However, the essence of Mr Fennell's evidence, which in this respect we accept, is that the policies of the 1995 UDP were no longer being strictly applied in South Shoreditch at the valuation date because they had been superseded by a new approach based on changes in the area and in national and local policy guidance which had occurred between 1997 and 2001. The policies of the UDP which were no longer being strictly applied included those which sought to favour Class B2 development and exclude residential uses from the area in order to preserve its historic character. They were no longer being strictly applied because the council recognised that the industrial character of the area had changed to a mixed-use character and it was neither realistic nor consistent with new government policy to seek to resist such change.

76. In February 1997 the replacement PPG1: General Policy and Principles was issued. It contained, as it put it, "a fresh emphasis on mixed use development." Paragraph 8 is particularly to be noted:

> "Within town centres but also elsewhere, mixed use development can help create vitality and diversity and reduce the need to travel. It can be more sustainable than development consisting of a single use. Local planning authorities should include policies in their development plans to promote and retain mixed uses, particularly in town centres, in other areas highly accessible by means of transport other than the private car and in areas of major new development. What will be appropriate on a particular site will be determined by the characteristics of the area – schemes will need to fit in with and be complementary to their surroundings – and the likely impact

on sustainability, overall travel patterns and car use. The character of existing residential areas should not be undermined by inappropriate new uses."

77. There is no dispute that the subject land was an area that was highly accessible by means of transport other than the private car, and in which policies promoting and retaining mixed uses should be included under the terms of this guidance. Similarly PPG3 paras 49-51 urged authorities to promote developments containing a mix of uses, including housing.

78. In June 1996 the council published planning guidance on live/work development, and it updated this in July 1999. The guidance stated the benefits of such development but said that it would only be allowed in DEAs if certain criteria were met. In 1998 the council embarked on a review of it UDP, but it abandoned this in March 2000. As a policy document it would therefore have carried no weight at the valuation date. It is sufficient to note that it contained a policy, E6 (D1), which applied to the city fringe area including Holywell Lane, that set out criteria for permitting mixed-use development. These included requirements that there should be no lack of operational business floor space and that the uses within the development should be compatible. We accept that this policy arose out of guidance in the PPGs and was consistent with them.

79. The claimant placed reliance on a number of planning permissions for mixed-use development in the area that the council had granted in the period 1995-2001. Mr Rowell said that they were clearly indicative that mixed employment and residential or live/work development was acceptable in December 2001. Reliance was also placed on two appeal decisions.

80. The appeal decision on Westland Place, Nile Street, Britannia Walk, London N1 concerned the council's failure to determine applications for, in one case, an 8 and 9 storey building and, in the other, a 6 and 7 storey building, in each case with a basement. The uses were said to comprise B1 business use, live/work units and flats. The decision is dated 3 July 2001. The site was included within a DEA in the SS1A, and was thus subject to policies E1, E5 and ST25, which aimed to safeguard and resist the loss of employment generating uses and site area. The site was identified in the UDP as being in an area which would be safeguard for B1 and B2 development. The inspector identified three main issues that arose in the appeals. The second issue was whether the proposals would result in the loss of potential employment generating development or floor space, contrary to relevant local and national policies.

81. The inspector noted that PPG1 encouraged mixed-use developments and said that they could help create vitality and diversity and reduce the need to travel. PPG3 and PPG4 also promoted mixed-use development, and PPG13 aimed to reduce the need for car journeys. He went on:

"The UDP does not contain any policies concerning mixed uses. No policies concerning the need to reduce reliance on the private car were drawn to my attention in the UDP. I therefore consider that the UDP is out of date as it has been superseded by more recent planning policy guidance issued by the Government on these matters (see paragraph 54 of PPG1). I have previously concluded that I can give little weight

to the Draft UDP. Consequently, I intend to give more weight to Government advice in PPG1, PPG3, PPG4 and PPG13 on these matters than the UDP or the Draft UDP."

82. Addressing specifically the second issue the inspector said:

"Despite the Council's concerns about loss of employment development, it has granted permission for a mixed-use development on the site. I believe this to be a realistic action given the Government's encouragement for mixed-use development that I have mentioned, the lack of reference to such proposals in the UDP, and the Councils SPG on live/work development. The Council recognised at the Inquiry (and also in its Draft UDP) that policies and attitudes to mixed-use development have changed. Moreover, the character of the area is one of mixed-use development containing a large number of live/work units, and this as acknowledged in the Conservation Area report (Document 4) and by the recent permissions granted by the council in the surrounding area. Given this, I again consider that the permission granted for the Appeal B proposal forms a benchmark against which the Appeal A proposal should be assessed."

83. The inspector noted that the council desired to see 50% or more of the net floor space in a development in a DEA used for commercial purposes. He said in relation to this:

"The Council's figure of 50% plus of pure commercial floor space in a development is not contained in any UDP policy or SPG – it is a 'rule of thumb' which had been applied to other similar proposals, such as the housing association development opposite. That being so, the weight that I can give it is slight. Until the floor space proportion is finalised in policy terms, I consider that each case must be decided on its own merits, bearing in mind factors such as the type/mix of development proposed, the location of the site, the site's allocation in the UDP, employment levels, and commercial floor space availability. In this case, my judgment is that the proportion of commercial floor space should be around and close to 50% due to the site's allocation and employment protected status in the UDP."

84. The second appeal decision, given on 24 July 2001, concerned a site at 5 Garden Walk, London EC2, within the South Shoreditch Defined Employment Area and the South Shoreditch Conservation Area. The site contained a 2-storey industrial building used for the manufacture of furniture with adjacent servicing and car parking spaces. The appellants sought conservation area consent for the demolition of the building and planning permission for an 8-storey building for mixed commercial use and live/work units. The council had failed to determine either application. The inspector granted both the consent and the permission. He concluded that the concept of live/work units as a component of urban regeneration in the inner city was ideally suited to implementation on the site in conjunction with commercial uses on the lower floors.

85. We accept that these two decisions are good evidence for the purpose of determining what decision a reasonable planning authority would have made on an application for development of the subject land. It appears to us also that the planning permissions for mixed-use development that had been granted by the council prior to the valuation date were generally

consistent with the approach of the inspectors in these two appeals. It is clear that at the valuation date the policies in the UDP were substantially out of date to the extent that they failed to make provision for mixed-use development as required by PPG1. The council itself had recognised this and had sought to address it in the UDP review, which it abandoned in March 2000 (and to which, as we have said, no weight is to be attached). It had also granted the planning permissions relied on by the claimant. Our conclusion is that the appeal decisions to which we have referred, and particularly that on Westland Place, establish the correct approach for a planning authority to have taken in relation to the claimant's redevelopment proposals in the no-scheme world at the valuation date. In view of the location of the subject land and the nature of the existing building a mixed-use development would in our judgment have been permitted, provided that it was not incompatible, physically and in terms of use, with the adjacent buildings and uses.

86. We accept that the subject land was suitable for mixed-use development. There was no Class B2 use close to the land. The properties to the east were those fronting Shoreditch High Street, with a mix of retail, service B1 and residential uses. To the west, Wich House, 59-63 Holywell Lane contained a storage use on the ground floor and residential uses or the upper floors. Although permission had been refused in July 2000 for a live/work use on the third floor, we accept that this was a reflection of the inadequacy of the application rather than a rejection of mixed-use development as such.

87. As for the particular proposal to which the valuers' evidence was directed we conclude that it would have been regarded as acceptable. The replacement of 340 sq m of B2 floor space by 493 sq m of B1 floor space would not have been considered objectionable, nor would the residential element. There is no reason to suppose that the relationship of the proposed building to the listed building at 196 Shoreditch High Street would have led to its rejection. The proposed building would have been regarded as a potential improvement to the setting of the listed building, and detailed consideration would have been given to its design.

88. Our conclusion, therefore, is that at the valuation date there was a reasonable prospect of planning permission being obtained for the development (the Calfordseaden scheme) and that, in accordance with our views on the issue of law, planning permission should be assumed for the purposes of valuation. We would add that, at the relevant date for a section 17 certificate, the autumn of 1993, there is no evidence to suggest any likelihood of planning permission for mixed-use development, and it can reasonably be inferred that a certificate for such a use would not have been given.

89. We need also to consider the prospects of obtaining planning permission for the purposes of valuation based on hope value. Our own assessment is that the prospects of obtaining planning permission at the valuation date would have been good. In order to assess hope value, however, what is relevant is not our view of the prospects but the view that prospective purchasers of the site would have taken as to the prospects. In the event we find nothing in the evidence before us to suggest that the view of the market at the valuation date would have been different from the conclusion that we have reached in this respect.

Valuation: introduction

90. Mr Hardy, for the claimant, produced what he described as an addendum to an earlier expert witness report that had been prepared by John Cousins BSc MRICS, the former head of Smith Melzack Pepper Angliss's valuation department who, with effect from 1 May 2007, had left the firm, and was unavailable to attend the hearing. He confirmed that in the absence of Mr Cousins, the original report was to be adopted as if it were his, together with the amendments and additions he had provided. He said that whilst his firm had been instructed in the matter in December 2005, he personally had no previous experience in compensation matters, and only became involved on a formal basis shortly before Mr Cousins left. However, he said he did have previous knowledge of the subject property, prior to his joining his current firm, having given informal advice and valuations to the claimant in respect of the prospective development potential of the site since about 1999.

91. In his view, in the light of the poor state of the then existing buildings, and the redevelopment potential of the site, a prospective purchaser would undoubtedly be a developer, and he would need to undertake a residual calculation to assess what he could afford to pay for the site. This was the only approach that Mr Cousins had used, and Mr Hardy emphasised that it was also his opinion that this was the correct methodology to use in this case. During the course of the hearing, a number of inconsistencies were found in his residual valuation, and with some further agreement between the experts in respect of areas, he provided a final version on the last day, this being attached at Appendix 1. The expressed value for the subject property of £907,072 was based upon the assumption that planning permission existed at the valuation date for the claimant's proposed mixed-use scheme, and that vacant possession was immediately available. Those assumptions, he said in cross-examination, had been made at the request of his instructing solicitors.

92. In the light of the methodology used by Mr Todd, and the fact that he assumed that the Tribunal would require an alternative, Mr Hardy also produced a valuation on the comparables basis in the additions he provided to Mr Cousins' original report. His own analysis of six of the comparables that had been considered by Mr Todd produced a value of £718,000. Finally, in the event that the Tribunal found that existing use value was the appropriate figure to adopt, Mr Hardy said it would be £653,310.

93. Mr Todd, for the acquiring authority, used three approaches. He said that the existing use value of the property, assessed purely on an investment basis, was £227,500. However, recognising that a prospective purchaser would anticipate being able to obtain planning approval for redevelopment of the site, he researched a number of sales of comparable properties in the vicinity, adjusting the results to reflect various factors including the likelihood or otherwise of being able to gain the required planning consents. That analysis produced a value for the subject property of £281,000, but it was submitted that some £50,000 then needed to be deducted to reflect the alleged need to remove the legal encumbrance of the tenancy to Die Formes, and the cost of removing printing equipment. Mr Todd's residual valuation (Appendix 2), on the basis of the claimant's proposed mixed use scheme and assuming planning permission existed, came to £274,489 (which included an allowance for obtaining possession), but he said that, in reality, a very substantial discount would have to be made to

reflect the risks that permission might not be obtained, and thus concluded that the existing use value was the correct figure to apply.

94. This Tribunal has said on many occasions that a valuation by reference to comparable transactions will usually provide the best evidence of open market value and is to be preferred to a residual valuation (see for instance *Snook v Somerset County Council* [2004] RVR 254 at paragraph 30). In the present case, as we shall say, the evidence of comparables that was adduced is inadequate in our view to enable us to base a valuation upon it, and we are therefore thrown back on a residual valuation. We deal first with the evidence and our conclusions on the residual valuations, including our own valuation. We then consider the evidence on the comparative basis valuations. We then deal with existing use value and, finally hope value. A hope value valuation is required to give an alternative value if we are wrong on the point of law. Existing use value needs to be determined both because it could affect a hope value valuation and because it would become relevant if it produced a value that was higher than the residual valuation or the hope value valuation.

Residual valuation

95. In preparing their residual valuations, the experts used an industry standard computer program from Circle Software Ltd, commonly referred to as "Circle Developer", and at the request of the Tribunal, a copy was made available to us. Whilst the valuers were understood to have agreed all the underlying assumptions to be inputted into the residual model, we have noted some differences that make a marginal difference to the final result. These are set out in table form below:

	HARDY	TODD
Disposal:	Purchaser's costs based on gross capitalisation	Purchaser's costs based upon net capitalisation
	Purchaser's costs added to cost (not deducted from sale)	Purchaser's costs deducted from sale (not added to cost)
Interest:	Interest not calculated on items in final DCF period	Interest calculated on items in final DCF period
	Interest not included in IRR calculations	Interest included in IRR calculations
Cashflow:	Initial IRR guess rate 8%	Initial IRR guess rate 10%

We adopt Mr Hardy's inputs for the above in our residual valuation that appears at Appendix 3.

96. Mr Hardy said that, based upon his instructions that it was to be assumed that the subject property had the benefit of planning consent for the claimant's proposed scheme and that work could effectively commence immediately after the valuation date, the property would undoubtedly be acquired by a developer. That developer would wish to undertake a residual valuation to calculate the amount he could afford to pay, and, therefore, that was the most appropriate method in this case. He (and Mr Cousins before him) had been able to agree many of the component parts (other than the underlying assumptions referred to above) with Mr Todd, but there remained differences in a number of key areas. Both valuers made a

number of amendments to their figures during the course of the hearing. Mr Hardy's final version at £907,072 is at Appendix 1, and Mr Todd's at £274,489 is at Appendix 2. For the sake of brevity, we consider the evidence of both valuers together on those areas upon which they failed to agree and provide our conclusions as to the appropriate inputs under each disputed head.

97. On the projected revenue side, Mr Hardy adopted Mr Cousins' assessment that achievable office rents would be £22.50 psf for the ground and first floors and £15 psf for the basement area, based upon details of comparable local lettings from September 2001 where basements were included, and others. Mr Todd agreed £22.50 for the first floor, but suggested £20.00 for the majority of the ground floor as it would have less natural light especially at the rear, and would be inconveniently divided by the staircase leading to the upper levels, and £10 psf for the reception area. However, in cross-examination, he accepted that his concerns about natural lighting on the ground floor were unfounded. £10 psf was, he said, the appropriate figure for the basement, and here lighting was definitely a problem. He noted that Mr Cousins's comparables had comfort cooling and he adjusted accordingly. As to the lower rate for the reception area, he argued that that was standard valuation practice. Mr Hardy said, in cross-examination, that he was of the view that the layout of the scheme, which he thought nowhere near perfect or the best use of the site, would evolve as it progressed, and his rental values reflected that. It was evident to us that he based his projections upon an assumption that the Calfordseaden plans could be improved but, as far as this exercise is concerned, the calculations must be based upon the scheme as proposed. Indeed, the floor areas agreed between the valuers are as shown on the scheme plans.

98. It was submitted by Mr Nardecchia that Mr Todd had discounted the achieved rents on the basement at Luke Street (£18 psf), which was also described as dark, by too much to allow for the lack of comfort cooling in the proposed scheme and the fact that, as Mr Todd had admitted, rents had increased by some 5% between September and December 2001. Mr Barnes submitted, in connection with this item and all the others upon which the valuers had failed to agree, that Mr Hardy had, when initially adopting Mr Cousins' residual valuation, failed to consider the matter in sufficient detail, as evidenced by the innumerable changes that he had had to make to his valuation during the hearing.

99. We agree with Mr Barnes, and are satisfied that Mr Todd has, in general terms, demonstrated a rather more careful and considered approach although, as will be seen below, there are some aspects of his valuation with which we do not agree. We note his acceptance that he was wrong regarding the ground floor lighting, and are of the view that if, as we deem correct, the reception area is to be taken at a lower rate, the rate should be the same as at the first floor – £22.50 psf. We also think he may have been, on the basis of the comparable evidence, somewhat harsh on the basement. In our residual valuation therefore (which is at Appendix 3) we adopt the agreed £22.50 psf for the ground and first floor offices, £11.25 psf (50% of the office rate) for the reception areas, and conclude that £12.50 psf is appropriate for the basement.

100. As to the residential element, both Mr Cousins and Mr Todd had used, as their main comparables, the prices achieved for new flats and refurbishments in Hoxton Square, along with others in the vicinity. On the basis of this evidence, Mr Cousins had said £425 per sq ft

was appropriate for the new residential units at Holywell Lane, and Mr Todd took £400 psf. Mr Hardy said that he was of the view that the figure should be £450 psf, based upon a 10% discount from "established levels" of £500 psf in Hoxton Square for flats with comparable, relatively small floor areas. Whilst it was agreed that Hoxton Square was a better location than the subject property, Mr Todd said that he did not agree Mr Hardy's assessment of the average prices achieved there, so his £400 psf was not a 20% discount from Hoxton Square values. Although he admitted he had not carried out his own investigations, Mr Todd said his conclusion was based upon all of the transactions that had been included in the schedule originally produced by Mr Cousins, and also used by Mr Hardy.

101. That schedule of transactions readily demonstrates to us that, with there being only one mentioned in Hoxton Square at or above £500 psf, that figure could not be taken as an average, and it seems to us £450 psf is somewhat nearer the mark. Following our site visit, and having considered the levels achieved on all the flats referred to in the schedule (other than live/work units) we are satisfied that Mr Todd's figure of £400 psf fairly represents what would have been achieved on the prospective new residential units at Holywell Street during the projected marketing period.

102. Turning to costs, the valuers were not far apart on construction, having used the RICS/BCIS Building Cost Review as their source. Mr Hardy adopted Mr Cousins' £100 psf, and Mr Todd used £110. It was accepted that interpretation of the figures, and application to a specific project, are somewhat subjective, but both valuers explained in detail how they reached their conclusions. It seems to us that either of the figures could be equally applicable, and so we simply split the difference at £105 psf – which is what Mr Todd said the valuers would probably have done if they had been negotiating. Mr Todd allowed £10,000 for costs associated with archaeological investigations, and Messrs Cousins/Hardy did not, although in re-examination Mr Hardy agreed that if they were applicable, that was a reasonable estimate. We accept that that cost should be applied.

103. Mr Todd allowed £50,000 as a "vacant possession premium" whereas Mr Hardy included nothing, assuming vacant possession to be available at the valuation date, and that the vendor would have removed the former printing equipment. Whether or not an allowance should be made was a matter of legal submission. Mr Barnes suggested that there was a possibility that the lease formerly subsisting on 64-67 Holywell Lane may have passed to the Crown (under the provisions of section 654 of the Companies Act 1985) when the company known as Die Formes was dissolved and had not been disclaimed by the Treasury Solicitor under section 656 at the valuation date. If that was the case, and the property was, as the claimant contended, ripe for redevelopment, then the Treasury Solicitor would have had a duty to seek a sum of money for regularising the tenancy. A prudent purchaser would have built £20,000 into his residual valuation to allow for this contingency together with a "spot figure", as Mr Todd described it, of £30,000 for clearing the premises.

104. Mr Nardecchia pointed out that a document had been produced to show that the lease on 64-67 Holywell Lane terminated on 28 February 1994, that there was no evidence of the grant of any subsequent lease or tenancy, and that no rents or other monies had since been received. The premises were occupied by Mr Radford, his wife, and Mr Roscoe from February 1994 and from whom the business of Die Formes was acquired by Spirerose in December 1999,

following the purchase of the freehold interests. The legal documentation relating to the purchase of the buildings and the business clearly showed, Mr Nardecchia said, that there were no subsisting tenancies, and vacant possession would have been available at the valuation date. Notwithstanding this, even if the Treasury Solicitor had been involved, there was no evidence that he would have sought any premium, and given the state and condition of the building he would probably have been only too pleased to disclaim the lease at nil consideration to avoid future liabilities. As to the cost of removal of equipment, there was no basis for the inclusion of such a figure in the calculation. A vendor, whether a receiver or an individual or company, would normally make arrangements for the removal of fixtures fittings and equipment and would either re-use them elsewhere, or obtain monetary value on their disposal. We accept Mr Nardecchia's submissions on this point, and can see no justification for including any allowance within the residual calculation. We accept the claimant's evidence and consider it fair to conclude that vacant possession would have been available on a sale at the valuation date in the no-scheme world, and the 2 months allowed for obtaining vacant possession should not be included. This factor, of course, affects project length.

105. The valuers were significantly apart on the question of marketing costs for the development. Mr Hardy, who allowed £5,000, said that at the relevant time, there was an exceptionally strong market; the flats would have sold off-plan, thus negating the need for a show flat or extensive advertising, and the offices would also have let easily. Mr Todd allowed £40,000 as he was of the view, expressed in cross-examination rather than specifically in his reports, that the market had become uncertain, particularly following the events of 11 September 2001, by the valuation date. However, as Mr Nardecchia pointed out in submissions, that view contradicted what he had said in his written evidence, and the rental evidence that had been produced showing a 5% increase between September and December 2001. We accept the claimant's evidence in this regard, being satisfied that both the residential and office markets were still buoyant at the valuation date, and in our judgment there was nothing that would lead a developer to have doubts about the continuing strength of the market. However, we are concerned that for a mixed development of this nature, the sum of £5,000 would not go very far at all in marketing terms and therefore consider that the sum of £20,000 would be more realistic for this item.

106. The valuers were 0.01% apart in their assessment of the costs to be allowed for the institution purchasing the investment. We take the industry standard of 5.76% as adopted by Mr Todd. We note that both valuers allowed 5.5% for the acquisition costs, the difference of 0.26% from the sum normally included in such calculations relating to VAT on the 1.0% agents fees and 0.5% legal fees and legal fees. However, as this element is agreed, we do not disturb it.

107. This leaves the question of project length – that being the total length of time elapsing between the assumed acquisition of the subject property on the valuation date, and the final disposal of the fully sold and let freehold as an investment. The sum allowed for costs of finance is dependent upon this. Mr Hardy, based upon his assumptions of an existing planning permission, vacant possession, and the site being "ready to go", took an overall term of 12 months which, at the agreed cost of borrowing of 6.25%, resulted in an allowance of £81,715. In his initial residual valuation, Mr Cousins had taken 28 months at 6%. Mr Todd projected a period of 40 months which produced finance costs of £233,828.

108. Mr Hardy said that a period of 12 months was sufficient to allow for demolition and construction and, bearing in mind the buoyant market, it was reasonable to anticipate that the flats would all be sold, and the offices let, during that period. It was agreed that, whether or not the offices were occupied immediately upon completion, a rent-free period of 6 months should be allowed, and this was built into the calculation. Mr Todd's residual valuation did not, of course, assume planning permission to be in place at the valuation date, and it also assumed that an initial 2 months would be required to obtain vacant possession. The period was made up, sequentially, thus:

To obtain vacant possession and clear premises	2 months
Marketing (existing premises)	12 months
To obtain planning consent	8 months
Demolition/construction	12 months
Letting void (offices)	6 months
Total	40 months

109. We have already dealt with the initial 2 month period. However, in our view, it is unrealistic to suggest that no time at all would elapse between completion of the acquisition, and starting work on site. Time would be needed to co-ordinate contractors and professional advisers, start dates and the like, and we consider, therefore, that a 3 month period should be allowed as "pre-construction" for this purpose. As to marketing of the existing premises, it was submitted that if the acquiring authority's planning arguments are accepted, a period of 12 months active marketing of the premises as available for sale or to let for their existing industrial use, would have had to have been completed before an application would have been entertained by L B Hackney. This point, Mr Barnes said, had indeed been acknowledged in Mr Fennell's planning evidence for the claimant. However, Mr Nardecchia pointed out that Mr Fennell had in fact concluded (in para 6.5 of his report) that the authority would probably not require this to be undertaken. Mr Fennell had also stated in his oral evidence that, as the land was located within the City Fringe DEA proposed in the working draft of the UDP Review, it was policy E6 rather than E5 that applied, and E6 had no such marketing requirement. As will be seen from our conclusions on the planning issues we accept that there would, in reality have been no such requirement and therefore, in our judgment, the whole of that 12 month period can be deleted from the total.

110. Next, according to Mr Todd, at least 8 months should be allowed (knowing that Hackney planners were notoriously slow in determining applications) to obtain the requisite permission. Mr Fennell had suggested 6 months. Whilst we have determined above that it is to be assumed that planning permission was in existence at the valuation date, we are of the view that in the alternative, hope value, scenario that we have to consider, a period of 8 months is the minimum that a prospective developer would have allowed if the whole planning exercise had to be commenced upon completion of the purchase at the valuation date.

111. The time to be allowed for demolition and construction was not in dispute, but whilst Mr Hardy thought that the offices would be let and would be occupied as soon as the development was completed, Mr Todd allowed a further 6 months void for the commercial element. He acknowledged that the flats would have been sold off-plan but said that what were

proposed to be very basic offices without comfort cooling or suspended ceilings were not pre-let material and could not effectively be marketed until they were complete. We accept Mr Todd's views on this and add 6 months void for the offices (and allow for 6 months rent free) in our calculation which becomes:

Period	PP exists at Valuation date	PP to be sought
To obtain vacant possession	0 months	0 months
To obtain planning consent	0 months	8 months
Pre-construction	3 months	3 months
Demolition/construction	12 months	12 months
Letting void (offices)	6 months	6 months
Total	21 months	29 months

112. Our valuation is at Appendix 3. Adopting the agreed inputs and applying our own conclusions on those that were not agreed, it produces a residual of £608,030 – say £608,000. The valuation assumes, in accordance with our earlier conclusion, that planning permission is to be assumed to have existed at the valuation date. If, however, planning permission is not to be assumed at that date but is to be assumed at such time thereafter as it could have been expected to be granted, so that an allowance should be made for the time needed to obtain it, our valuation is that in Appendix 4, where the residual is £583,395 – say £583,000.

Comparative basis valuations - evidence

113. Mr Todd considered an analysis of the sale of comparable properties in the area to be the most appropriate route to establishing whether or not there was any additional value attributable to the prospects of gaining planning permission. He initially considered eleven transactions within a mile or so of the subject property, of which ten were open market sales, and one, 197-198 Shoreditch High Street, was a negotiated settlement under the scheme. All of the transactions took place within a time scale of 9 months either side of the valuation date. He then dismissed three of these transactions. He rejected 55-57 Rivington Street and a site at the corner of Wheler Street and Quaker Street because each of them had been sold with the benefit of planning permission, and the prices achieved reflected that fact (£278.78 psf and £229.55 psf respectively). Mr Todd also rejected 10a Great Eastern Street because, although it was very close to the subject property, he thought that it might have had a significant element of ransom value in connection with access to the adjacent property. Although he was unable to adduce evidence to that effect, Mr Todd said he thought 10a had been purchased by the owner of the adjoining property and, at £276.21 psf, was clearly out of line with the comparables upon which he had relied.

114. In making adjustments for the prospects of obtaining planning permission to the comparables that he did use, so as to relate them to the different prospects on the subject property, Mr Todd said he had relied to a large extent upon the views of Mr Rowell. He said that a prospective purchaser would anticipate that there was some long-term hope of obtaining permission for a development that included live/work or residential use on the upper floors, but he was of the view that that hope would be less than it was with any of his comparables, other than 97-101 Hackney Road, where he said the chances were the same. He also adjusted for location, market growth, economies of scale (larger sites having a proportionately lower build cost than smaller ones) and prominence. He produced a table analysing the sale of eight properties, which, once adjustments to compare the sale site with the subject property had been made, indicated an average value of £93.51 psf based on overall site area. All the properties were in a Defined Employment Area, and six of them were in the South Shoreditch Inset Area. The first property considered, 23-25 Waterson Street E2, was a 4,326 sq ft site where the buildings had already been demolished and it was being used as a temporary car park. It was in a quiet side street somewhat further away from the City but still within the South Shoreditch Inset Area as depicted on the UDP plan. The site sold in May 2001 without planning consent for a price equivalent to £116.61 per sq ft, but was subsequently developed following a planning approval gained in 2004 for mixed B1 offices and residential use. Mr Todd deducted £10,000 from the sale price for the fact that there would be no demolition costs, giving £114.21 psf, then added 5% for location and 10% for capital growth between May and December 2001, but then deducted 20% for the fact that, in his view, there was a better chance of achieving planning consent at Waterson Street than at the subject property. These adjustments resulted in an overall 5% deduction from the achieved sale price to give an equivalent value of £108.50 psf.

115. 97-101 Hackney Road was a site of 6,547 sq ft that sold prior to auction 3 months after the valuation date, without planning permission, for £91.64 psf. Slightly further from the City, being just north of Waterson Street, it had a main road frontage but had yet to be developed. Mr Todd considered that there was an equal chance of planning consent being obtained on this site, but after adjustments for location, prominence and the capital growth that would have occurred over the 3 month period, he felt there should be an overall reduction of 2.5% to give an equivalent value of £89.35 psf. 9-11 Garden Walk was a cleared site of 6,534 sq ft, which also sold prior to auction without planning permission for £153.05 psf in December 2001 and did not therefore need any adjustment for growth. It was close to the subject property but in a more attractive, quieter area that had a higher proportion of residential units. Planning permission was granted in May 2003 for ground and first floor offices, with 5 floors of flats above. The largest adjustment that had to be made, Mr Todd said, was a reduction of 35% to reflect considerably higher hope value for achievement of the required planning consent that existed at Garden Walk. After making further adjustments to allow for demolition costs and economies of scale the overall reduction should be 40% giving an equivalent value of £90.90 psf.

116. 86-90 Curtain Road EC2 was a very large site of some 33,000 sq ft occupied by virtually derelict buildings, sold without planning consent in September 2001 at £110.61 psf. It has subsequently achieved planning consent and has been converted to part commercial and part residential accommodation. Mr Todd said there was a 20% better chance of that permission being achieved than on the subject property, and after the other adjustments he made for area, economies of scale, prominence and growth, the overall reduction became 25% and the equivalent value was thus £82.96 psf. 92-96 Curtain Road EC2, being immediately adjacent

warranted similar adjustments, in this case a 27.5% reduction (20% of which related to the better planning prospects) from the sale price of £135.71 psf to £98.39 psf. 2-10 Hertford Road N1 and an adjacent site were sold in March and July 2002 at £93.91 psf and £128.11 psf respectively. These were adjusted in the same manner to produce equivalent values of £78.88 and £108.99. In both cases, the chances of achieving planning consent for commercial/live/work/residential use were considered to be 10% better than at the subject property. 197-198 Shoreditch High Street, acquired by agreement in connection with the scheme, warranted a deduction of 35% from the compensation paid of £138.80 psf to allow for that property's infinitely greater prospects of obtaining planning consent.

117. Mr Todd also analysed the acquisition of the subject property in two parts by the claimant in April and December 1999, although he accepted that the purchase of the second, smaller area as part of the acquisition of a business was not particularly useful. The major area, of about 2,614 sq ft, was bought from the receiver for a price which equated to £43.99 psf. That figure, he said, needed to be adjusted upwards by 100% to £87.98 psf to reflect market growth in the 20 months to the valuation date. Having established a range of values of between £87.98 psf and £93.51 psf, Mr Todd said that allowing for the fact that the four comparables that needed the least adjustment came out to an average of £90.40 psf, he was of the view that the appropriate value for the subject property, allowing for its limited prospects of obtaining permission for a scheme that included residential elements, was £90 psf. This he applied to a site area of 3,122 sq ft (being the area calculated by the architects Calfordseaden and advised by them to the council in August 2004) to give £280,980, say £281,000. He then deducted £20,000 to cover costs and delays in dealing with the Treasury Solicitor for obtaining vacant possession, and £30,000 for the cost of removing the remaining printing machinery and equipment, to leave a net £231,000.

118. In cross-examination, Mr Todd acknowledged that he had used a number of comparables that were somewhat further away from the City, and that if he had relied solely upon those that were really close-by, the average adjusted values might have been higher. He said that he used the purchase of the larger portion of the site by the claimant in 1999 as a starting point for his valuation, but he accepted that by then the CPO was confirmed and the price, which was also negotiated in September 1998, could not, therefore, be considered untainted by it. However, he said that it could be expected that market value would have been paid, as the receiver would be bound to achieve the best price possible. As to 197-198 Shoreditch High Street, Mr Todd said that whilst it was a negotiated settlement, it was relevant as the compensation paid had to be based upon open market evidence. However, he accepted that in reality the price actually paid had been considered marginally below open market value and LUL had therefore been keen to complete the deal. He accepted that the percentage adjustments he had made to the properties and sites sold without planning permission had been subjective, and to a large extent were based upon his knowledge of the area, and, as to the adjustments for the chance of obtaining planning consent, had been influenced by Mr Rowell's report. Mr Todd agreed with the suggestion that, if the Tribunal found that planning permission would have been forthcoming, the two comparables he had dismissed would become relevant, and, with the re-adjustments that would have to be made to the comparables that did not have planning consent, the rate for the subject property would need to be much higher. However, he stressed that adjustments would still need to be made. For instance, Rivington Street was a much better location, although being for office use only it did not have the more valuable residential element. Wheler Street/Quaker Street on the other hand had a much higher residential content than was provided for in the claimant's scheme, together with valuable A3 use at ground floor.

119. It was contended on behalf of the claimant that the majority of the comparables upon which Mr Todd relied were in less attractive areas, further away from the City fringe, and therefore less valuable. Mr Nardecchia submitted that a number of adjustments made by Mr Todd did not fairly reflect the differences, and in any event, if the claimant's planning arguments were accepted, he should not have made any further adjustments for the likelihood or otherwise of obtaining planning permission. The Rivington Street and Wheler Street/Quaker Street comparables were, it was submitted, highly relevant and allowing for an accepted adjustment to the former to reflect growth in the market, the average of the two was about £240 psf.

120. The comparables method was not Mr Hardy's preferred methodology, as it was his view that, with the subject property presenting a specific redevelopment opportunity (the claimant's proposed scheme), a residual calculation was preferable, and would provide a more accurate figure. However, he did analyse six of the comparables that had been considered by Mr Todd (three of which had been rejected by him) to give an alternative to his principal valuation method, and he also commented on some of the others. In his analyses, he made no distinction between those sites that had planning permission and those which did not, choosing instead to take an overall average per sq ft of the prices achieved, adjusted as necessary, and then applied that to the subject property. The properties he chose to analyse were those, which, he said, were closest to the subject property, and his valuation on this basis (amended at the commencement of his evidence to reflect his late withdrawal of another comparable at 196 Shoreditch High Street) was £718,000.

121. Referring firstly to 10a Great Eastern Street, Mr Hardy reduced the achieved price by 10% to reflect its smaller size to give an equivalent value of £248.14 psf. He said that 92-96 Curtain Road had a frontage to an extremely busy and noisy main road, the buildings were in exceptionally poor condition and would be difficult and costly to convert, and the site area was twice that of the subject property. He therefore adjusted the purchase price of £135.71 to £192.57 to reflect the differences. 86-90 Curtain Road was 10 times the size of the subject property, and in Mr Hardy's view an even larger adjustment was needed. He applied 45% to the £110.61 sale price to give £167.24 psf. He accepted in evidence that he had not made any further adjustment for the fact that it had transpired that the property had suffered severe structural problems, and needed £4.5 million to stabilise it. If he had done so, he said the averaging exercise would have produced a higher figure. On 9-11 Garden Walk, Mr Hardy added 10% to the sale price of £153.05 for its quieter location and larger size to give £168.35. Of the two properties that had been sold with planning permission, Mr Hardy made no adjustment to Rivington Street (£278.78 psf). On Wheler Street/Quaker Street, which he considered to be eminently comparable, Mr Hardy said initially that, because it had full planning permission, and the assumption that the subject property only had outline consent presented "a small element of risk", he was proposing to adjust that price of £229.55 psf by averaging it with the preceding 5. However, having realised that meant it would be given a weighted average 5 times that of the other comparables, he finally settled upon an unweighted average of all 6 comparables to give £214.10 psf. He applied this to a site area for the subject property of 3,354 sq ft, which, he said, was derived from calculations undertaken by the acquiring authority in December 2005, by digitally overlaying the title plans onto the Ordnance Survey sheet.

122. Mr Hardy rejected 197-198 Shoreditch High Street as it was a CPO related settlement, and there were questions over whether the agreed price actually represented the open market value in the no-scheme world. He also dismissed 97-101 Hackney Road, the site and building in Hertford Road and 23-25 Waterson Street, as these were considered to be too far away to provide a meaningful comparison. Finally, he did not consider the previous transactions relating to the subject property. He accepted in cross-examination that he had assumed in carrying out his analyses that planning permission did exist for the claimant's scheme at the valuation date and that, if permission were not to be assumed, the exercise would need to be done again.

123. In submissions, Mr Nardecchia said that the averaging exercise could be open to criticism as it was too general in nature, and the difference between the £718,000 arrived at by this method and the one arrived at on the residual basis could be due to the deficiencies of the comparables and the averaging process based upon them. However he said that whilst it was the claimant's case that no adjustments should be made for differential hope value of obtaining planning permission, it was possible to derive separate averages for those sites that did have permission (about £240 psf) and those that did not (£195 psf), both of these figures being substantially higher than the £90 psf propounded by Mr Todd. Mr Barnes pointed out that, as had been mentioned in a rebuttal report from Mr Todd, it appeared that Mr Hardy had made his adjustments for the size of the comparable properties and sites in the wrong direction.

Comparative basis valuations - conclusions

124. Mr Todd produced his comparables for the purpose of valuing the subject land on the assumption that there was no planning permission for its development but that there was a hope that planning permission might be granted. He therefore based himself on the comparables that related to sites that did not have planning permission at the time of the transaction and he rejected as of no assistance for his purposes the two transactions where there was planning permission. We have concluded that the subject land is to be valued on the assumption that it had planning permission on the valuation date, and we cannot derive a value on this basis from transactions relating to sites without planning permission. We also consider that a valuation based on hope value cannot satisfactorily be made, as Mr Todd sought to do, on the basis of these transactions. The making of adjustments to reflect the comparative chances of obtaining planning consent for redevelopment in those cases where properties were sold without the benefit of it is inescapably speculative, and Mr Todd acknowledged in cross-examination the subjective nature of the exercise. A purchaser would not have known whether planning permission would be granted or when it might be obtained, the amount of floorspace that would be permitted or the mix of uses. He might have anticipated achieving a less valuable consent than was eventually achieved and the price paid might, therefore, have been less than that which would have been appropriate if the exact planning prospects had been known. Or he might have expected a more valuable consent. There could have been a range of possible types of development, with different prospects relating to each. If a property had significant existing use value that could well affect the purchase price since that could well reduce the downside risk in a speculative purchase. With insufficient knowledge of the circumstances surrounding each of the comparable transactions, we are thus forced to the conclusion that it would be unsafe to seek to base a valuation on those transactions where planning permission did not exist.

125. One aspect of the unreliability of the hope value transactions can be seen in graphic form by reference to the residual valuations in the present case. It is clear from these that the value of a development site in this location was substantially dependent on the proportionate mix of residential and business uses. Mr Hardy took a rate of £450 psf for the residential element of the proposed development and a rate for the ground and first floor business uses that capitalises at £270 psf. Mr Todd took £400 psf for the residential floors and capitalised rates of £225 and £270 psf respectively for the ground and first floors. We have taken that £400 and £270. Since the costs attributable to each of the uses in the residual valuations are not significantly different, it follows that if, for instance, the first floor were to be residential rather than business or if the second floor were to be business rather than residential the difference in gross development value would be in excess of £200,000. Expressed in terms of £ psf for a site area of 3,122 sqft (Mr Todd's figure, which we accept), this difference would be £64 psf. The difference would clearly be very significant indeed whether related to Mr Hardy's residual valuation (£907,072), which gave £290 psf, Mr Hardy's £274,489 and £88 psf or our own £608,000 and £195 psf. On any of the hope value comparables lack of knowledge of the mix of uses that might be permitted would be a significant factor.

126. Two of the transactions related to sites with planning permission. Wheler Street/ Quaker Street, where the price devalues to £229 psf, had planning permission for ground floor retail and residential on four floors above, and 55-57 Rivington Street, which devalues to £278 psf, had permission for a three-story office building. Rivington Street was in a better location and it appears there may well have been a hope of achieving planning permission for at least some residential floorspace, but even allowing for these factors, given the different uses permitted at the two sites, it is very difficult to reconcile these two prices. Our conclusion is that these two transactions are too narrow and unsatisfactory a base to enable a comparative basis valuation of the subject land to be made. The general observation may, however, be made that these two sites with planning permission fetched substantially more (£229-278 psf) than the sites without planning permission (£44-153 psf), and this is what we would expect. (We omit from the latter category 10a Great Eastern Street, where it seems clear that special considerations applied.)

Existing use value – evidence

127. The valuers agreed that, to assess the existing use value of the subject property, the investment method was appropriate, although there were virtually no comparables available of either sales of like units, or rental evidence. They were unable to agree the areas of the ground floor and basement as they existed at the valuation date. Mr Hardy acknowledged that an existing use valuation had not been produced in the original report but in carrying out this exercise himself, adopted the stated internal floor area of 3,660 sq ft overall from Mr Cousins' description of the property. He said that from information provided by his City of London office, he was of the view that an appropriate rental value for a City fringe light industrial workshop would be about £12.50 per sq ft (psf) overall but he made no distinction between ground floor and basement. In cross-examination he said he thought £15 psf on the ground floor and £10 psf for the basement were appropriate, and thus his figure was an average. However, as Mr Barnes pointed out in his submissions, the ground floor area was in fact almost three times the size of the basement. Mr Hardy said that in arriving at his figure, he had also considered the schedule of office rents that Mr Cousins had produced and had made an appropriate discount. He did not agree with Mr Todd's reliance upon the valuation officer's

assessment for rating purposes, but in any event, he said, the existing use value was not relevant, as no account was taken of the development potential.

128. To the resulting rental value of £45,750pa Mr Hardy then applied a yield of 7%, which was 1% less than that which Mr Cousins and Mr Todd had believed would be appropriate for capitalising the prospective new offices in their residual valuations. This figure, he said, reflected the considerable redevelopment potential that existed (which in cross-examination he stated to be the opportunity to increase the income by renovation or conversion to offices), but he accepted that he had not allowed anything for the cost of the works that would be required to facilitate the expected growth in income. Mr Nardecchia acknowledged in closing that Mr Hardy's yield admitted an element of redevelopment value and was not therefore, strictly speaking, an existing use valuation. Using the 7% multiplier of 14.28 gave a capital value of £653,310.

129. In his original report of 12 May 2006, Mr Todd assessed the existing use value of the subject property at £250,000 but did not explain how that figure was reached. He had at that time been of the view that the value of the property, assessed by reference to comparables and reflecting its under-developed nature and thus an element of hope value, was £281,000 and it had not been necessary, therefore, to provide justification for the EUV. However, in his second supplemental report of January 2007 he said that he had not previously been aware of Die Formes tenancy, and by the time an allowance was made for obtaining vacant possession, the existing use value became the highest valuation, and thus the compensation to be awarded. In January 2007 he produced a third supplementary report that, following his discussions with Mr Hardy on the issue of floor areas, and noting an earlier arithmetical error, re-examined his estimate of the existing use value.

130. Mr Todd said that he adopted the gross internal areas from the plans that were attached to the schedule of condition prepared by Watts & Partners and which gave 2,298 sq ft on the ground floor, and 891 sq ft in the basement, totalling 3,189 sq ft. Those areas, he said, were broadly supported by those in the summary valuation prepared by the Valuation Office Agency for the 2005 rating list which were, in fact, slightly less. As there was no contemporaneous evidence of rental values for similar premises in the area at or around the valuation date, Mr Todd adopted the figures used by the VO, as these would have been derived from rental return forms received from general industrial users in the immediate vicinity. These were £6.19 psf for the ground floor, and £3.10 psf for the basement, to which he added £400 for each of the three car parking spaces, giving an annual rental value of £18,187. Whilst he accepted that the antecedent valuation date was 1 April 2003, some 16 months after the valuation date, he was of the view that there was likely to have been little difference in values between the two dates. Although demand had been strong until the latter part of 2002, it had tailed off, and it also had to be borne in mind that the subject premises were in poor condition and that would be reflected in the rental value. He also accepted that the valuations for rating assessments were on the statutory hypothesis that required the assumption of a tenancy from year to year, but pointed out that in practical terms there should be little difference as the figures in the rental returns would most likely relate to traditional periodic tenancies. Nevertheless he did acknowledge in cross-examination that a valuation based purely on rating returns would be less reliable than reference to comparables. Applying a multiplier of 12.5 to the rental value to reflect a YP of 8%, produced £227,338, say £227,500.

Existing use value – conclusions

131. It was clear that neither Mr Cousins, nor Mr Todd set much store by the existing use value when their initial reports were prepared. Mr Cousins made no mention of it, and Mr Todd settled upon a figure of £250,000 that was not supported by any calculations or methodology. All the valuers who have been involved concluded that the property contained development potential, to varying degrees, and it is quite understandable that little thought appeared to have been given to a basis that should exclude any hope value for future development. Indeed, it was only when potential costs associated with removing a tenant came into play that it became apparent, in the acquiring authority's view, that existing use value might exceed that which might obtain if development potential were taken into account. At that stage, Mr Todd sought to reconsider the matter and as a result reduced his initial figure by £22,500. In closing Mr Nardecchia criticised the use by Mr Todd of the VO's valuation on a number of grounds including the fact that the rating valuation was carried out in the real world on the statutory basis, rather than, as was required here, the open market value in the no-scheme world on the basis of section 5, rule (2) of the Act. There was also a disparity in dates and it was submitted therefore that no weight should be given to that evidence. Whilst we agree that, as Mr Todd admitted, that evidence was not ideal, we are satisfied that it is considerably more persuasive than that of Mr Hardy, who produced no rental evidence whatsoever for an appropriate type of user and relied principally upon a conversation he had had with one of his colleagues, who gave an opinion on rental values for light industrial units on the City fringe. We were not told whether they were 2007 values, or those considered to be applicable at the valuation date. He did say that he had also considered Mr Cousins's schedule of comparable lettings and had made a significant discount from that. However, that schedule was for B1 offices, and in our view rental values for such a use would bear no relation to the type of premises that are the subject of this reference. Mr Hardy also made no distinction between ground floor and basement in his overall assessment of £12.50 psf, and when challenged referred to it being an average between ground and basement rates. As was pointed out, with there being so much difference in areas, that could not have been so. We attach no weight to his expressed opinions in this element of the valuation.

132. In the absence of any other evidence we are bound to attach weight to Mr Todd's analysis as he did, as Mr Barnes said, at least attempt to adduce comparable evidence and explained how he went about it. We therefore adopt his rental values. As to areas, we are satisfied that Mr Todd's approach was entirely reasonable, and again he explained where his figures came from. Mr Cousins did not disclose in his original report the provenance of his estimate of 3,660 sq ft which did not, in any event, distinguish between floors. Mr Hardy simply adopted that figure and, as we have said, he did not seem to have considered the question of different floors until he was cross-examined on the point. We therefore accept Mr Todd's areas. Finally, turning to the question of yield, it was accepted by the claimant that Mr Hardy's use of 7%, reflecting as it did development potential, did not produce a true or untainted existing use value. As Mr Todd and Mr Cousins had agreed 8% between them, we adopt that figure. The valuation is therefore:

Ground floor 2,298 sq ft @ £6.19 psf	£ 14,224
Basement 891 sq ft @ £3.10 psf	£ 2,762
3 parking spaces @ £400 each	£ 1,200

	£ 18,186
YP in perpetuity at	12.5
	£227,325

Say £227,500

Hope value

133. Based upon our conclusion that if we are wrong in our view that planning consent is to be assumed at the valuation date, there was a strong likelihood that the claimant's scheme as proposed would have gained consent if an application had been made at the valuation date, it is necessary, to arrive at our valuation in the alternative, to consider the size of the reduction that a prospective purchaser would make from the full development value to reflect the risk. Allowing only for an extension to the development cycle to allow for the time taken to achieve planning consent would make only a marginal difference to the residual land value if that method were used. However, a residual valuation can be of no assistance in these circumstances, as it does not, and cannot, include any allowance for the risk that the required permission might not be forthcoming. Moreover, as we have said, we do not find Mr Todd's hope value comparables of assistance in deriving a value for the subject land because of the great range of unknowns and uncertainties relating to them.

134. To reach our assessment of the value of the site on the basis that there was no more than a hope of planning permission, we start by noting our conclusion on existing use value (£227,500) and the value that we find that the site would have had with the benefit of planning permission (£608,000). Its value if there was only a hope of planning permission would be somewhere between these two figures. Our conclusion is that there would have been a very good prospect indeed of getting planning permission for some form of redevelopment, a good chance of getting permission for the scheme that has been the subject of the residual valuation and little chance of achieving a planning permission for a scheme with a greater element of residential floorspace. We see no reason for thinking that a purchaser would not form a similar assessment both of the existing use and development values and the prospects of achieving planning permission. He would, however, be very conscious of the uncertainties – of not achieving planning permission for a valuable development, of the amount of floorspace and the mix and the potential for delay in achieving permission. Our conclusion is that a purchaser in these circumstances would have been prepared to pay substantially more than existing use value but much less than full development value, say £400,000.

Conclusion

135. We determine the compensation payable as follows:

(a) On the basis that planning permission for a mixed use development would have been granted at the valuation date, which we find on the facts to be the case, and on the basis that such permission is to be assumed for the purposes of valuation, which we conclude to be the correct approach in law, £608,000.

(b) Alternatively, if such a permission is to be assumed, but only at such time after the valuation date as it could have been expected to be granted, our valuation is £583,000.

(c) Alternatively, if such permission is not as a matter of law to be assumed and only hope value is to be taken into account, £400,000.

We would add that if a restricted approach to the application of *Pointe Gourde* were correct (see paragraph 64 above), so that planning permission should only be assumed pursuant to *Pointe Gourde* if the statutory provisions would give compensation that is far removed from what would be fair, our conclusion is that this restricted test would be satisfied. The reason for this is that none of the statutory provisions would give a value that is in excess of existing use value. If a section 17 certificate had been issued, the relevant date would have been autumn 1993, and at that time planning permission for a mixed-use scheme would not have been forthcoming. The difference between each of the values that we have determined above and existing use value is very great.

136. This decision determines the substantive issues in this reference and will become final when the question of costs is decided. The accompanying letter sets out the procedure for making submissions on costs.

Dated 16 November 2007

George Bartlett QC, President

Paul R Francis FRICS

ADDENDUM

137. In our decision we omitted to deal with the claimant's claim for pre-reference costs. We now do so. The claim amounts to £27,850, said to have been properly and reasonably incurred in preparing and negotiating the redevelopment value claim between 1 September 2003 and 6 April 2005 (the date of the notice of reference). The claim was for four items of expenditure made up as follows:

> Solicitors' fees £7,000 + VAT. Fees for co-ordinating the work of the architects and valuers, correspondence with LB Hackney in connection with the judicial review relating to the section 17 application instigated by LUL, correspondence and preparation of the notice of reference.
>
> Counsel's fees £600 + VAT. Fees for advice in November 2004 relating to the claim for a Certificate of Alternative Use.
>
> Architects fees £15,000 + VAT. Fees relating to the preparation of plans for section 17 application – Live/Work unit and Residential options, preparation of 3 schemes for Dalton Warner Davis [claimant's former valuers] in connection with residual valuations, correspondence and meetings with LB Hackney.
>
> Surveyors' fees £5,250 + VAT. Fees for research and preparation of advice on valuation, discussions regarding section 17 application, meetings with LUL and assistance with preparation of the notice of reference.

138. Mr Nardecchia submitted that in a complex claim of this nature, it was not unreasonable for costs to have been incurred in applying for a section 17 certificate, for plans to have been prepared and for two alternative schemes to have been considered. He did not agree with Mr Barnes's suggestion that the cost of preparing the plans should be disallowed because they were either a justifiable cost of the development, or would be the responsibility of the hypothetical seller. That, he said, would be confusing the hypothetical world that is to be considered here, and the real world.

139. The advice from Spirerose's former valuers was also relevant, and the fact that they were no longer instructed did not invalidate the claim. Finally, legal and counsel's fees that had been incurred should be compensated for as the solicitor had an important role to play in giving advice on the law and co-ordinating the work of the other professionals involved. Whilst Lodders were not, in fact, instructed in respect of the application for a section 17 certificate, some of their fees related to the judicial review proceedings brought by LB Hackney to quash the decision made on the first application. The claimant should not, Mr Nardecchia said, be penalised for errors made by LB Hackney and it was reasonable for it to have been involved in the High Court proceedings in this regard. He said that the questions that had been raised by the acquiring authority's solicitors during the course of the hearing had been fully and comprehensively answered in a letter to them of 11 July 2007, and under all the circumstances the claimant should be awarded the costs claimed under rule (6).

140. Mr Barnes said that the actual sums being sought did not appear to be excessive given the amount of work that was claimed to have been done, but it was the legal principle of whether the majority of that work actually related to preparing, explaining and delivering, within a reasonable time, a reasonable claim in answer to the notice to treat that needed to be considered. He set out at length the principles that applied to claims for costs associated with preparation of the claim as distinct from the costs regime applicable to costs associated with the reference, and referred in particular to *London County Council v Tobin* [1959] 1 WLR 354. In that Court of Appeal judgment, Morris LJ said, in connection with the [then applicable] Lands Tribunal Rules 1956 relating to "the costs of and incidental to proceedings" (at 367):

> "It is said that the costs incurred in preparing a claim could be regarded as costs of and incidental to the proceedings. But when a claim is presented following a request contained in a notice to treat, it may be the hope of both parties that there will never be 'proceedings' before the Lands Tribunal. The reason why the acquiring authority ask for a claim to be presented is so that if possible they can amicably agree as to the amount of compensation and so settle all outstanding matters."

He went on to say:

> "The acquiring authority wish to know what sums are claimed so that if they agreed to pay such sums there would be no outstanding claims. If a claimant could show that he had incurred expense in obtaining professional help, and that it was reasonable for him to have incurred it, and that the figure of his expense was reasonable, then the time for him to ask to be reimbursed was when he responded to the invitation in the notice to treat."

141. Mr Barnes said that the notice to treat in this case was served on the claimant on 24 August 2001, and possession was taken in December 2001. The only notice given under section 4(3) of the 1961 Act was that contained in an unsigned document dated 14 June 2007 enclosed as an exhibit to Mr Orlik's witness statement of 28 June 2007. It was clear, therefore, that Spirerose had made no attempt to respond within a reasonable time to the requirements of the notice to treat. Even by the time the reference was made, on 6 April 2005, no quantified or properly explained claim had been delivered. As a result, there could be no suggestion that the statutory procedure had been followed, and LUL had no opportunity to make a proper response in the manner described in *Tobin*. The rule that the expenses of preparing a claim may be part of the claim itself is, Mr Barnes said, an exceptional rule special to claims for compensation for compulsory purchase, but it the claimant fails to comply with a reasonable timescale, he should not be entitled to those expenses.

142. It was accepted that the claimant can still claim those expenses as part of his costs in the reference under the general costs rule, and in that case they would, along with all the other costs, be subject to assessment if not agreed. However, Mr Barnes submitted that it would send a poor message to parties in compensation cases if it came to be believed that claimants who fail to proceed expeditiously and in accordance with defined statutory procedure, could gain advantage by claiming such expenses in this alternative way. As a matter of law and principle, therefore, it was submitted that the claim under the second limb of rule (6) of section 5 should be rejected as a matter of law, and should not be admissible under any head of statutory compensation as a matter of principle.

143. In any event, Mr Barnes said, if we find against the acquiring authority on that argument, there is then the question of whether the costs claimed did indeed relate to professional services which, in the words of Morris LJ in *Tobin*, had "properly and reasonably been obtained." As to Calfordseaden's fees relating to the section 17 certificate application, Mr Barnes restated the history of that exercise and said that in part due to their failures, and those of the instructing solicitors, no certificate was ever issued and the "whole saga was brought to an end by the application being implicitly abandoned." Furthermore, the plans for the development that included live-work units were not prepared for the scheme for which the principal compensation was claimed, and the plans prepared to assist Dalton Warner Davis were again not directly related to the relevant claim. Those plans that were prepared for the development for which compensation was claimed were, Mr Barnes said, strictly costs of development that would be either be paid for by the hypothetical vendor and thus deducted from the claim as a necessarily incurred cost of obtaining open market value, or by the hypothetical purchaser, and built into the residual valuation.

144. In respect of Dalton Warner Davis's fees, Mr Barnes submitted that there was no evidence that their advice on valuation had been used in connection with the reference as they had been disinstructed some time previously, they were not involved when the section 17 application was made, and the sum claimed in respect of assisting the solicitors with the preparation of the claim, was out of all proportion to what they would, in fact, have had to do. A proportion of their claimed fees might, subject to the principal legal argument, be justified, particularly that relating to early discussions with LUL.

145. The only element of Lodders' claimed fees that might be deemed reasonable, it was submitted, related to correspondence with the acquiring authority and the claimed fees of counsel related to advice relating to a matter, the answer for which could easily be found in any legal textbook.

146. In summary, Mr Barnes said that the sums claimed were not paid to the professional advisers for preparing, explaining and delivering a reasoned claim in response to the notice to treat, in reasonable time. If claimed at all, they should be considered as ordinary costs in the reference and in any event only a very small proportion of the costs could be seen as reasonably and properly incurred.

Conclusions

147. On the basis of *LCC v Tobin* the claimant ought to receive, as part of its compensation, any costs that it reasonably incurred before the date of the reference in preparing its claim for compensation, since those costs represent part of what it has lost through compulsory acquisition of its land. Costs incurred after the date of reference are governed by section 4 of the 1961 Act; and, under subsection (1), where a claimant has failed to deliver a claim in time to enable the acquiring authority to make a proper offer, the claimant must, in the absence of special reasons, bear its own costs and pay those of the acquiring authority. This provision relates specifically to the costs of proceedings before the Lands Tribunal. The purpose is to ensure that the authority is not liable for the claimant's costs, and gets its own costs, up to the time when it could have made a proper offer. There is clearly an underlying policy purpose in

ensuring that the authority is in a position to make an offer before it incurs, or becomes liable for, any costs in the proceedings. As far as pre-reference costs are concerned, however, provided that they were reasonably incurred in preparing the claim, it does not seem to us that there is any reason for disallowing them, simply because no claim or no suitably quantified claim was submitted to the authority before the reference was made to the Lands Tribunal. The reasonableness of such costs is to be judged in relation to the need for them to have been incurred for the purpose of determining the compensation to which the claimant is entitled, and the policy purpose underlying section 4(1) has no application.

148. We are satisfied that it was reasonably necessary to prepare a scheme of development in order to establish the amount of compensation. Indeed, we have determined compensation by reference to the Calfordseaden scheme, and we can see no reason why the reasonable costs of its preparation should not form part of the compensation payable. As to the element of the fees relating to the preparation of 3 schemes to assist the claimant's former surveyors with the residual valuation, we accept that this was necessary and note from the explanation set out in Lodders' letter of 11 July 2007, that that work only involved sketch-schemes, and the architects' fees involved were £1,500 which were not, in our judgment, unreasonable.

149. As far as the surveyors' fees were concerned, it was confirmed that they had undertaken a large amount of preparatory work in connection with a valuation of the subject property, and we are satisfied that as far as they related to advice on valuation, and assistance with preparation of the notice of reference, they were reasonably incurred.

150. It was also reasonable to make a section 17 application. However, the application turned out to be abortive, as we have explained in our decision, and it seems to us that the claimant's professional advisers must bear some responsibility for this. They ought to have ensured that the application was dealt with on a proper basis. As they did not, the costs incurred in relation to the application were wasted, and we do not think, therefore, that they should form part of the compensation.

151. It has not been possible, from the copy invoices and attached narratives, to define precisely the proportion of fees that were incurred specifically in respect of the section 17 application, but it was evident that that proportion was not insubstantial. Doing the best that we can, we determine that the claim of £27,850 plus VAT should be reduced by 35% to reflect the section 17 work, leaving the sum of £18,102.50 to be paid by the acquiring authority in respect of the pre-reference costs.

Dated 17 December 2007

George Bartlett QC, President

Paul R Francis FRICS

Addendum on costs

152. We have received (between 10 January 2008 and 13 February 2008) a series of written submissions on costs. The claimant asks for its costs on the basis that the compensation determined exceeds all offers made by the acquiring authority, as well as an offer made by the claimant, and that there are no special reasons to deprive it of any of its costs. Mr Barnes on behalf of the acquiring authority, accepts that in principle the claimant is entitled to its costs, but he says there are special reasons for reducing the total costs allowed. Those reasons are the unreliable nature of parts of the claimant's valuation evidence and six procedural matters where, it is said, the acquiring authority's costs were unnecessarily increased by the actions or failures of the claimant. It is suggested that it would be fair to reduce the claimant's costs by 50% to reflect these matters.

153. In addition there is a specific point of dispute as to whether the claimants are able to claim the premium that the Administrator of Spirerose paid in order to effect an insurance policy to cover his liability in the event that Spirerose was ordered to pay LUL's costs. Although this is a matter that could be dealt with on detailed assessment, it seems appropriate for us to deal with it now in view of the full submissions on it that the parties have made.

154. Mr Barnes submits that there were aspects of Mr Hardy's evidence, viewed in the light of our conclusions upon them, which would justify a reduction in costs. He points to our agreement at paragraph 99 with his submission that Mr Hardy, when initially adopting Mr Cousins' residual valuation, had failed to consider the matter in sufficient detail. He also instances seven respects in which in our residual valuation we adopt figures that are different from Mr Hardy. Mr Barnes also points to the fact that, for reasons that we explained, we attached no weight to Mr Hardy's views on existing use value (see paragraph 131). Although it is indeed correct to say that we were critical of the quality of Mr Hardy's evidence, we do not think it appropriate to deprive the claimant on this account of any of the costs to which it would otherwise be entitled because we see no reason to think that the acquiring authority have been put to any significant additional expense because of it. As far as the individual items in the residual valuation are concerned, all these were matters on which different views could be held, little time was spent on exploring them at the hearing, and at the end of the day we reached a valuation that was rather closer to Mr Hardy's than Mr Todd's.

155. The procedural matters that Mr Barnes relies on are these. It is said that it took five months, between September 2005 and February 2006, and required an order from the Tribunal, before information relating to the acquisition of the property by Spirerose was provided; that unexplained delay occurred in the production of Spirerose's experts' reports, and orders by the Tribunal were required; and that this engendered costs, including the need for an oral hearing by way of pre-trial review. As the claimant now points out, however, at the pre-trial review held on 12 June 2006 the acquiring authority asked for their costs of the hearing, advancing these matters as the justification, but we determined that they should not be given their costs and ordered that the costs of the pre-trial review should be costs in the reference. We see no reason to think that the delays themselves increased to any significant extent the costs incurred by the acquiring authority.

156. Four further procedural matters are cited by Mr Barnes. Firstly it is said that the claimant failed to produce an adequate agreed statement of facts and issues as required in our order at the pre-trial review of 12 June 2006, and, following our order of 4 January 2007 that the experts should meet and produces a proper statement, although the planning experts did this, the valuers did not, and that it was the claimant's valuers' fault that they did not. The claimant rejects the suggestion that it failed to co-operate in seeking to agree a statement and in view of this difference, which it would be disproportionately expensive to seek to resolve by way of a hearing, and because we do not think that, even if the acquiring authority are right, that they will have incurred any significant costs by reason of this, we see no reason to reduce the claimant's costs.

157. Next it is said that the substitution of Mr Hardy for Mr Cousins as valuer and the late production of his report meant that the acquiring authority wasted time in dealing with Mr Cousins' report and in having to deal with Mr Hardy's report at the last moment. We accept that there is justification in this complaint, and we think, taking account of the fact that Mr Hardy based himself on Mr Cousins' report, thus saving his own time, that the matter is best dealt with overall by disallowing the costs of Mr Cousins' report.

158. Next it is said that the acquiring authority incurred additional costs by reason of misinformation on the claimant's part relating to the lease to Die Formes Ltd. Mr Barnes says that LUL first became aware of the lease because it was referred to in a letter from Lodders, the claimant's solicitors, of 15 February 2006, because it was referred to in Mr Cousins' report and because it was referred to in the statement of agreed facts lodged by Lodders on 19 December 2006, which stated that at the valuation date Spirerose owned the freehold of the property subject to the tenancy of Die Formes and had acquired the business of Die Formes in 1999. Mr Todd had had to alter his valuation to take account of this and then had had to alter his valuation again when in February 2007 the claimant stated that Die Formes Ltd had been dissolved in 1999. The claimant says that the documents relevant to this matter were in fact disclosed to LUL on 8 December 2005, including the 1989 lease, which showed that there never was a protected tenancy and that the tenancy determined on 28 February 1994. There was no evidence of a lease being granted after that date. Therefore, although it was correct to say that Mr Councils and Lodders were in error in stating that a tenancy or protected tenancy existed, LUL's legal advisers had the documents on which they could see that this was not the position.

159. While we can understand Mr Todd's decision to amend his valuation to take account of the position in relation to the Die Formes lease as the claimant successively suggested it to be, the fact is that the material enabling him and LUL's legal advisers to judge what was the correct position was available to them. We do not think, therefore, that the incorrect statements made by the claimant amounts to the sort of conduct that requires reflection in the order as to costs.

160. The final procedural matter to which Mr Barnes refers relates to the claimant's failure to pursue a disturbance claim. In paragraph 2 we refer to the start of the hearing on 13 February 2007 and its adjournment until July. We say that it was adjourned to enable the claimant to produce a disturbance claim. We are reminded that the adjournment in fact occurred because it was clear, after time-consuming initial applications had been made by each party, that the days

allocated for the hearing in February were too few to allow completion of the case, and the claimant's statement on that occasion that it might wish to make a claim for disturbance was only an additional factor in the decision to adjourn. Mr Barnes says that the refusal by the claimant to provide particulars of their disturbance claim until, in June 2007, it stated that the claim was for pre-reference costs only, ought to be reflected in our costs order. We see no reason to do so, as there is no reason to think that the failure to produce a claim other than in respect of pre-reference costs has entailed any costs on the part of the acquiring authority.

161. In his submissions Mr Barnes says that it was suggested by Spirerose's solicitors in a communication of 29 June 2007 that unless LUL were willing to settle the matter LUL would or might have to pay as costs the substantial insurance premium. He says that LUL would "of course" resist any such order and would respond to any submission that the claimant might make. Both parties have made further submissions on the question.

162. The facts relating to the insurance premium, on the basis of the submissions made by the parties and the documents attached to them, appear to be these. The Administrator was advised, by an experienced insolvency solicitor in the light of advice he had received on the potential adverse costs liability and the prospects of success, that the only way in which the claim could proceed was if the position was protected by adverse costs insurance. On 29 June 2007 he contacted Mr Simon Bachelor, the valuer dealing with the case at LUL's successor, Transport for London. The Administrator offered to settle the case and told Mr Bachelor that unless the claim were settled it would be necessary for him to enter into an insurance contract at a premium of £150,000. Mr Bachelor refused to accept the offer to settle. At 4.38 pm that day, which was the last working day before the start of the hearing on 2 July 2007, Mr Michael Orlick of Lodders e-mailed Mr Raj Gupta of Eversheds saying:

> "I attach draft Notice of Funding. The Administrator has explained to Mr Bachelor that we are about to get insurance. The policy has not yet been issued: Once it is issued the premium is payable. If we succeed in the Lands Tribunal this premium will be payable by London Underground."

At 5.02 pm Mr Gupta e-mailed back saying that he could not open the attachment.

163. The policy was issued on the morning of Monday 2 July 2007, and a copy was faxed to the tribunal. The Administrator handed a copy to Mr Gupta in the course of the morning.

164. On behalf of the acquiring authority it is said that, in relation to insurance premiums, which is not a matter covered in the Lands Tribunal Rules, it is appropriate to apply by analogy the relevant provisions of the Civil Procedure Rules. Under Rule 44 PD 19.2(4) it was necessary for notice of the funding arrangement to be filed and served within 7 days of its being entered into. No response, it is said, was received to Mr Gupta's e-mail that he could not open the attachment, and the claimant has never notified the acquiring authority that it has entered into a funding arrangement. In view of this, it is said, the acquiring authority should not be made liable for the cost of the insurance premium.

165. It is thus only an alleged procedural failure on which the acquiring authority rely to exclude the cost of the premium. They do not contest the principle of an award of costs in

respect of it, and indeed we think that in principle such cost ought to be allowed. We accept that, although the Civil Procedure Rules have no application in this Tribunal, it would be inappropriate for the Tribunal to allow costs incurred under a funding arrangement unless notice of the arrangement had been given to the other party, but we consider that in the circumstances adequate notice was given. The acquiring authority's valuer was told of the arrangement and the amount of the premium on 29 June 2007 and their solicitor was sent an e-mail with the requisite notice attached on the same day. He was unable to open the attachment, but he was nonetheless aware that there was a notice that the claimant was seeking to convey to him. He was given a hard copy of the notice on 2 July 2007. We can see no reason in these circumstances why the costs of the insurance premium should not form part of the claimants' costs.

166. The acquiring authority must pay the claimants' costs, except the costs of Mr Cousins' report, such costs if not agreed to be the subject of detailed assessment by the Registrar on the standard basis.

Dated 18 February 2008

George Bartlett QC, President

Paul R Francis FRICS

CLAIMANT'S VALUATION
ANDREW JOHN HARDY FRICS
Valuation as at 3rd December 2001

Appraisal Summary for Part 1

REVENUE					
Sales Valuation	**ft²**	**Rate ft²**	**Grs. Value**		
3rd Floor	1,638	£450.00	737,100		
2nd Floor	1,638	£450.00	737,100		
	3,276		1,474,200		
Rental Area Summary	**ft²**	**Rate ft²**	Grs. Rent pa		
Lower Grd Floor	1,736	£15.00	26,040		
Ground Floor	1,953	£22.50	43,943		
1st Floor	1,638	£22.50	36,855		
	5,327		106,838		
Investment Valuation			**Yield**	**Factor**	**Cap. Rent**
Lower Grd Floor					
Valuation Rent	26,040	YP @	8.0000%	12.5000	
(6mths Rent Free)		PV 6m @	8.0000%	0.9623	313,213
Ground Floor					
Valuation Rent	43,943	YP @	8.0000%	12.5000	
(6mths Rent Free)		PV 6m @	8.0000%	0.9623	528,546
1st Floor					
Valuation Rent	36,855	YP @	8.0000%	12.5000	
(6mths Rent Free)		PV 6m @	8.0000%	0.9623	443,297
					1,285,055
GROSS DEVELOPMENT VALUE					2,759,255
NET REALISATION					**2,759,255**
OUTLAY					
ACQUISITION COSTS					
Acquisition Price			907,072		
Stamp Duty		4.00%	36,283		
Acquisition Agent Fees		1.00%	9,071		
Acquisition Legal Fees		0.50%	4,535		
				956,961	
CONSTRUCTION COSTS					
Summary	**ft²**	**Rate ft²**	**Costs**		
Lower Grd Floor	2,105	£100.00	210,500		
Ground Floor	2,560	£100.00	256,000		
1st Floor	1,965	£100.00	196,500		
3rd Floor	1,965	£100.00	196,500		
2nd Floor	1,965	£100.00	196,500		
	10,560			1,056,000	
Contingency		5.00%	52,800		
				52,800	
PROFESSIONAL FEES					
Architect		5.00%	52,800		
Quantity Surveyor		1.00%	10,560		

Structural Engineer	1.00%	10,560		
Mech./Elec. Engineer	1.00%	10,560		
Project Manager	1.00%	10,560		
Constr. Des. Management	1.00%	10,560		
Post construction Costs		5,000		
			110,600	
MARKETING				
Marketing		5,000		
Letting Agent Fees	15.00%	16,026		
Letting Legal Fees		5,342		
			26,368	
DISPOSAL FEES				
Purchaser's Costs	5.75%	73,891		
Sales Agent Fees		27,593		
Sales Legal Fees	0.50%	13,427		
			114,911	
FINANCE				
Debit Rate 6.250% Credit Rate 0.000% (effective)				
Land		54,480		
Building		27,234		
Total Finance Cost			81,715	
TOTAL COSTS				**2,399,354**
PROFIT				**359,902**

Performance Measures

Profit on Costs	15.00%
Profit on GDV%	13.04%
Profit on NDV%	13.40%
Development Yield	4.45%
Equivalent Yield (Normal)	7.71%
Equivalent Yield (True)	8.08%
IRR%	30.50%
Rent Cover	3 yrs 4 mths
Profit Erosion (finance rate 6.250%)	2 yrs 3 mths

ACQUIRING AUTHORITY'S VALUATION
DAVID BROWN TODD BSc (ECON) FRICS FCIArb
64-67 Holywell Lane, London EC2
Redevelopment

Appraisal Summary for Linked Parts 1 2

REVENUE

Sales Valuation	**ft²**	**Rate ft²**	**Grs. Value**
Second	1,638	£400.00	655,200
Third	1,638	£400.00	655,200
	3,276		1,310,400

Rental Area Summary	**ft²**	**Rate ft²**	Grs. Value pa
Lower Grd	1,736	£10.00	17,360
Grd	1,703	£20.00	34,060
Grd Recep	250	£10.00	2,500
First	1,638	£22.50	36,855
	5,327		90,775

Investment Valuation	**Valuation Rent**		**Yield**	**Factor**	**Cap. Rent**
Lower Grd	17,360	YP @	8.00%	12.5000	
	6 mths rent free	PV (6 mths) @	8.00%	0.9623	208,808
Grd	34,060	YP @	8.00%	12.5000	
	6 mths rent free	PV (6 mths) @	8.00%	0.9623	409,678
Grd Recep	2,500	YP @	8.00%	12.5000	
	6 mths rent free	PV (6 mths) @	8.00%	0.9623	30,070
First	36,855	YP @	8.00%	12.5000	
	6 mths rent free	PV (6mths) @	8.00%	0.9623	443,297
					1,091,854

GROSS DEVELOPMENT VALUE			2,402,254
Purchaser's Costs	5.76%	-59,466	
NET DEVELOPMENT VALUE			2,342,788
NET REALISATION			**2,342,788**

OUTLAY

ACQUISITION COSTS			
Acquisition Price		274,489	
Stamp Duty	4.00%	10,980	
Acquisition Agent Fees	1.00%	2,745	
Acquisition Legal Fees	0.50%	1,372	
			289,586

CONSTRUCTION COSTS

Summary	**ft²**	**Rate ft²**	**Costs**	
Lower Grd	6,630	£110.00	729,300	
Second	3,930	£110.00	432,300	
	10,560			1,161,600
Contingency		5.00%	58,080	
				58,080

PROFESSIONAL FEES			
Professional Fees	10.00%	116,160	

MARKETING				
Marketing		40,000		
Letting Agent Fees	15.00%	13,616		
Letting Legal Fees	5.00%	4,539		
			58,155	
DISPOSAL FEES				
Sales Agent Fee		43,084		
Sales Legal Fees	0.50%	11,714		
			54,798	
ADDITIONAL COSTS				
Post Construction Costs		5,000		
VP Premium		50,000		
Archaeological Costs		10,000		
			65,000	
FINANCE				
Debit Rate 6.250% Credit Rate 0.000% (Effective)				
Total Finance Cost			233,829	
TOTAL COSTS				**2,037,207**
PROFIT				**305,581**

Performance Measures	
Profit on Costs%	15.00%
Profit on GDV%	12.72%
Profit on NDV%	13.04%
Development Yield	4.46%
Equivalent Yield (Normal)	8.00%
Equivalent Yield (True)	8.42%
IRR%	13.52%
Rent Cover	3 yrs 4 mths
Profit Erosion (finance rate 6.250%)	2 yrs 3 mths

LANDS TRIBUNAL VALUATION
64-67 HOLYWELL LANE, LONDON EC2

Appraisal Summary for Part 1

REVENUE

Sales Valuation	**ft²**	**Rate ft²**	**Grs. Value**
Second floor	1,638	£400.00	655,200
Third floor	1,638	£400.00	655,200
Totals	3,276		1,310,400

Rental Area Summary	**ft²**	**Rate ft²**	Gross MRV
Lower ground	1,736	£12.50	21,700
Ground	1,703	£22.50	38,318
First	1,638	£22.50	36,855
Reception	250	£11.25	2,813
Totals	5,327		99,685

Investment Valuation

Lower ground					
Market Rent	21,700	YP @	8.0000%	12.5000	
(6 mths rent free)		PV (6 mths) @	8.0000%	0.9623	261,010
Ground					
Market Rent	38,318	YP @	8.0000%	12.5000	
(6 mths rent free)		PV (6 mths) @	8.0000%	0.9623	460,888
First					
Market Rent	36,855	YP @	8.0000%	12.5000	
(6 mths rent free)		PV (6mths) @	8.0000%	0.9623	443,297
Reception					
Market Rent	2,813	YP @	8.0000%	12.5000	
(6 mths rent free)		PV (6 mths) @	8.0000%	0.9623	33,829
					1,199,024

GROSS DEVELOPMENT VALUE				2,509,424	
NET REALISATION					
OUTLAY					
ACQUISITION COSTS					
Residualised Price			608,030		
Stamp Duty		4.00%	24,321		
Agent Fees		1.00%	6,080		
Legal Fees		0.50%	3,040		
				641,472	

CONSTRUCTION COSTS

Construction	**ft²**	**Rate ft²**	**Costs**	
Lower ground	2,105	£105.00	221,025	
Ground	2,560	£105.00	268,800	
First	1,965	£105.00	206,325	
Second floor	1,965	£105.00	206,325	
Third floor	1,965	£105.00	206,325	
Totals	10,560		1,108,800	**1,108,800**

Contingency	5.00%	55,440	
			55,440
PROFESSIONAL FEES			
Architect	5.00%	55,440	
Quantity Surveyor	1.00%	11,088	
Structural Engineer	1.00%	11,088	
Mech./Elec.Engineer	1.00%	11.088	
Project Manager	1.00%	11.088	
C.D. Manager	1.00%	11.088	
			110,880
MARKETING & LETTING			
Marketing		20,000	
Letting Agent Fee	15.00%	14,953	
Letting Legal Fee	5.00%	4,984	
			39,937
DISPOSAL FEES			
Purchaser's Costs	5.76%	69,064	
Sales Agent Fee	1.00%	24,404	
Sales Legal Fee	0.50%	12,202	
			105,669
Additional Costs			
Archaeological fees		10,000	
Post construction costs		5,000	
			15,000
FINANCE			
Debit Rate 6.25% Credit Rate 0.00% (Effective)			
Land		47,031	
Construction		35,214	
Letting Void		22,665	
Total Finance Cost			104,910
TOTAL COSTS			**2,182,108**
PROFIT			**327,316**

Performance Measures	
Profit on Cost%	15.00%
Profit on GDV%	13.04%
Profit on NDV%	13.41%
Development Yield% (on Rent)	4.57%
Equivalent Yield% (Nominal)	8.00%
Equivalent Yield (True)	8.42%
Gross Initial Yield%	8.31%
Net Initial Yield%	8.31%
IRR	16.36%
Rent Cover	3 yrs 3 mths
Profit Erosion (finance rate 6.250%)	2 yrs 3 mths

LANDS TRIBUNAL
ALTERNATIVE VALUATION
64-67 HOLYWELL LANE, LONDON EC2

Appraisal Summary for Part 1

REVENUE					
Sales Valuation	**ft²**	**Rate ft²**	**Gross. Value**		
Second floor	1,638	£400.00	655,200		
Third floor	1,638	£400.00	655,200		
Totals	3,276		1,310,400	**1,310,400**	
Rental Area Summary	**ft²**	**Rate ft²**	Gross MRV		
Lower ground	1,736	£12.50	21,700		
Ground	1,703	£22.50	38,318		
First	1,638	£22.50	36,855		
Reception	250	£11.25	2,813		
Totals	5,327		99,685		
Investment Valuation					
Lower ground					
Market Rent	21,700	YP @	8.0000%	12.5000	
(6 mths Rent Free)		PV (6 mths) @	8.0000%	0.9623	261,010
Ground					
Market Rent	38,318	YP @	8.0000%	12.5000	
(6 mths Rent Free)		PV (6 mths) @	8.0000%	0.9623	460,888
Market Rent	36,855	YP @	8.0000%	12.5000	
(6 mths Rent Free)		PV (6mths) @	8.0000%	0.9623	443,297
Reception					
Market Rent	2,813	YP @	8.0000%	12.5000	
(6 mths Rent Free)		PV (6 mths) @	8.0000%	0.9623	33,829
					1,199,024
GROSS DEVELOPMENT VALUE				2,509,424	
NET REALISATION					
OUTLAY					
ACQUISITION COSTS					
Residualised Price			583,395		
Stamp Duty		4.00%	23,336		
Agent Fees		1.00%	5,834		
Legal Fees		0.50%	2,917		
				615,482	
CONSTRUCTION COSTS					
Construction	**ft²**	**Rate ft²**	**Costs**		
Lower ground	2,105	£105.00	221,025		
Ground	2,560	£105.00	268,800		
First	1,965	£105.00	206,325		
Second floor	1,965	£105.00	206,325		
Third floor	1,965	£105.00	206,325		
Totals	10,560		1,108,800	**1,108,800**	

Contingency	5.00%	55,440	
			55,440
PROFESSIONAL FEES			
Architect	5.00%	55,440	
Quantity Surveyor	1.00%	11,088	
Structural Engineer	1.00%	11,088	
Mech./Elec.Engineer	1.00%	11.088	
Project Manager	1.00%	11.088	
C.D. Manager	1.00%	11.088	
			110,880
MARKETING & LETTING			
Marketing		20,000	
Letting Agent Fee	15.00%	14,953	
Letting Legal Fee	5.00%	4,984	
			39,937
DISPOSAL FEES			
Purchaser's Costs	5.76%	69,064	
Sales Agent Fee	1.00%	24,404	
Sales Legal Fee	0.50%	12,202	
			105,669
Additional Costs			
Archaeological fees		10,000	
Post construction costs		5,000	
			15,000
FINANCE			
Debit Rate 6.25% Credit Rate 0.00% (Effective)			
Land		72,389	
Construction		35,907	
Letting Void		22,603	
Total Finance Cost			130,900
TOTAL COSTS			**2,182,108**
PROFIT			**327,316**

Performance Measures	
Profit on Cost%	15.00%
Profit on GDV%	13.04%
Profit on NDV%	13.41%
Development Yield% (on Rent)	4.57%
Equivalent Yield% (Nominal)	8.00%
Equivalent Yield (True)	8.42%
Gross Initial Yield%	8.31%
Net Initial Yield%	8.31%
IRR	13.09%
Rent Cover	3 yrs 3 mths
Profit Erosion (finance rate 6.250%)	2 yrs 3 mths