PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION BY SEGRO PROPERTIES LIMITED FOR A DEVELOPMENT CONSENT ORDER IN RESPECT OF EAST MIDLANDS GATEWAY PHASE 2

RESPONSES TO EXQ2

ON BEHALF OF

PROLOGIS UK LIMITED AND PROLOGIS UK 121 LIMITED

1.0.5 – *Section 35 Direction*

The ExP appreciates that this matter was discussed during CAH2 and that associated action points will be addressed accordingly. Supplemental to those, please can the parties explain whether the SoS has discretion to allow the development secured by the DCO to deviate from the wording of the s35 direction provided that it would be sufficiently similar in nature and scale to remain nationally significant? As such, would it be open to the SoS to consider the matter in terms of "fact and degree" during their decision or would they be bound by the exact wording of the s35 direction?

Response:

The SoS has no discretion to allow the development secured by the DCO to deviate from the wording of the Section 35 Direction on the basis that it would be 'sufficiently similar in nature and scale to remain nationally significant'. Such an approach would make the error of conflating two distinct statutory processes: (i) deciding whether a proposed development is nationally significant such that a direction should be made to bring the development within the PA 2008 regime, and (ii) determining a DCO application for a proposed development that falls within that regime.

It is not open to the SoS to vary the Section 35 Direction as part of the determination of an application for development consent in order, retrospectively, to bring that application within the PA 2008 regime. Whilst the Secretary of State retains the power to vary or revoke a section 35 direction under section 233 PA 2008, any such variation would need to be sought by the applicant at an appropriate stage and before the examination had commenced – it cannot be used to cure jurisdictional difficulties at the decision-making stage.

The PA 2008 rightly separates those processes and includes a separate provision empowering the SoS to vary or revoke a s.35 direction (s.233(2)). The existence of that separate provision, linked to the power to make a direction and not to the provisions governing the determination of applications for development consent, underlines the distinction.

The way that s.233(2) is expressed ("*A power conferred by this Act to give a direction* ***includes*** *power to vary or revoke the direction*" (emphasis added)) is significant. In other words, it effectively represents a clarification of the scope of the power in s.35 itself and not a freestanding power. S.35ZA(2) provides that the power to give a direction (and hence also to vary a direction) "*is exercisable only in response to a qualifying request*". In other words, the power cannot be exercised unilaterally by the Secretary of State but only in response to a qualifying request for a direction under s.35. SEGRO has not made any qualifying request to vary the Section 35 Direction.

The nature and jurisdictional effect of such a direction is confirmed by *EFW Group Ltd v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 2697 (Admin) ('**EFW**'). Whilst *EFW* was concerned with a different question (whether a section 35 direction has the effect of making a non-NSIP into an NSIP) its reasoning establishes a general principle of wider application. Namely that a section 35 direction fixes the gateway through which a project enters the PA 2008 regime.

At paragraph 60, Dove J held that the words in s35(1) 'be treated as development for which development consent is required':

> "*simply have the effect of making the proposed development subject to the decision-making framework contained within the provisions of the 2008 Act*. *They do not change the understanding of the proposal as not being within the definition of an NSIP, any more than they change the physical nature of what is comprised within the development*."

This is supported by the fact that section 35 sits within Part 4 of the PA 2008 concerned with when development consent is required, not Part 6 governing how applications are decided.

At paragraph 62, it was further held that "*the purpose of section 35 is not to make a project which is not and does not form part of an NSIP into an NSIP*". Its purpose being "*more modest*", namely to bring qualifying projects within the PA 2008's decision-making framework. It is clear then that a section 35 direction is a distinct administrative decision, made in response to a qualifying request, with jurisdictional effect enabling an application for a DCO to be accepted and then examined and determined under the PA 2008.

An application may only be accepted if the Secretary of State concludes, inter alia, that "development consent is required for any of the development to which the application relates" (s. 55(3)(c)).

If an application does not correspond with the direction, then the SoS has no jurisdiction to accept or determine it.

Even if a qualifying request were to be made now, the SoS could not lawfully seek to vary the direction and thereby belatedly confer jurisdiction on this application at the final, decision-making stage.

A purported variation made at the end of the process when the application reaches the SoS for the decision-making stage would subvert the scheme of the PA 2008 and have the effect of depriving Affected Persons such as Prologis of the following important procedural safeguards:

a.) the ability to challenge the lawfulness of a s.35 direction potentially affecting its rights at a time before an application could lawfully be accepted for a DCO including powers of CA (entailing the expenditure of considerable time and cost to seek to respond to and resist that application);

b.) the ability to make use of the opportunities presented by the examination process to probe and test an application for a DCO including CA powers in the context of a prior written and reasoned decision by the Secretary of State that the underlying development for which those powers are sought is nationally significant; and

c.) the ability to persuade the ExP of the merits of its case, and to rely on the ExP's duty to use its inquisitorial powers to probe and test the merits of the application for a DCO including CA powers in the context of a prior written and reasoned decision by the Secretary of State that the underlying development to which the application relates is nationally significant.

Such an approach would not only be unreasonable, it would also result in a manifestly unfair process and outcome and is clearly not what Parliament intended in framing the relevant provisions in the way that it did. In simple terms, the direction is the decision which enables an application for a DCO to be accepted, examined and then determined.

If instead of the development for which a direction has been sought and obtained a developer wishes to promote an application for a different development, it must first obtain a variation of the direction to allow this to be done and only then can an application for development consent for that development be accepted, examined and determined.

That is consistent with the explicit advice given in the direction that if the "*details of the Proposed Project change, **before submitting any application to the Planning Inspectorate**, the Applicant may wish to seek confirmation from the Secretary of State that the development which is to be the subject of the proposed application is the same as that for which this Direction is given*" (emphasis added). That advice would be very different if instead the Secretary of State could simply vary the direction accordingly at the point of decision. It is also consistent with the fact that Parliament has made separate express provision to deal with variation of directions. The appropriate route for addressing any change in the description of the development is that provided by section 35 PA 2008, pursuant to section 233 PA 2008, which confirms that the power to give a direction "includes power to vary or revoke the direction." It follows that, once SEGRO appreciated that the development it intended to apply for would not match the development specified in the Section 35 Direction, the proper course was to make a fresh application to the Secretary of State to exercise the section 233 power to vary (or to revoke and re-make) the Section 35 Direction before making its application.

The ExP is entitled and required to form its own judgment on jurisdiction and to make a recommendation to the SoS, but neither the ExP nor the SoS can cure a want of jurisdiction by treating the Section 35 Direction as variable at the decision-making stage.

1.1.1 – *Section 35 Direction*

In the "Applicants' Response to Deadline 1 Submissions" [REP2-032] in responding to the written representation from Prologis, in reference 5.7, there is a reference to "Prologis's current s35 Direction which they applied for". Could Prologis confirm whether or not it has made such an application for land on or in the vicinity of the application site, and if so, provide both a copy of the application, including any accompanying plan(s), and any subsequent direction issued by the Secretary of State.

Response:

Prologis confirms that it has not made any application for a Section 35 Direction in respect of the Joint Application, the EMG2 application site, or any land on or in the vicinity of that site. The reference in REP2-032 should not be read as suggesting otherwise. For completeness, and to avoid any misunderstanding, Prologis holds a Section 35 Direction in connection with the Daventry International Rail Freight Terminal IV on land to the east of M1 Junction 18, West Northamptonshire. That matter concerns wholly different land and circumstances; it has no bearing on the EMG2 application and is not relevant to this Panel's examination. Critically, the circumstances bear no comparison to the present case: Prologis is not seeking, by any such direction, to compulsorily acquire land that is being actively promoted by a commercial rival for similar development.

7.0.1 – *'Ransom' value*

In the report in Annex A of [REP3-061], in footnote 13 to paragraph 4.13 the author provides a list of cases. Could these please be fully referenced and provided as a single document.

Response:

We note that the correct footnote number is footnote 19 to paragraph 4.13 which provides a selection of cases dealing with ransom – also referred to in cases as a "shared payment", indicating how it relates to parties sharing in the benefit of development. Please see below the full references for these cases with the full judgments in the order they appear below available at Appendix 1:

- Stokes v Cambridge Corp (1961) 13 P. & C.R. 77
- Railtrack plc v Guinness Ltd [2003] EWCA Civ 188
- Persimmon Homes (Wales) Ltd v Rhondda Cynon Taff CBC [2004] 9 WLUK 339
- Snook v Somerset CC [2004] 4 WLUK 104
- Wards Construction (Medway) Ltd v Barclays Bank Plc (1994) 68 P & CR 391
- Batchelor v Kent CC (1990) 59 P. & C.R. 357
- Hertfordshire CC v Ozanne [1991] 1 W.L.R. 105

7.0.2 – *Alternatives*

Can the applicants provide further information about the negotiations they have had with affected persons (principally East Midlands Airport and Prologis) about entering into a joint venture to develop both northern and southern parcels of land subject to the EMG2 main site? For example, whilst the ExP acknowledges the applicants have provided some high level chronology of engagement, is there any further information about the details of the joint venture that was discussed, options for how the land might be jointly developed and any other alternatives to compulsory acquisition duly explored? For clarity, does East Midlands Airport or

Prologis dispute as a matter of fact whether the negotiations took place as set out in the applicants' response to relevant representations [REP1-051D], or do their objections principally relate to the substance of negotiations that took place?

Response:

Prologis welcomes the opportunity to provide the ExP with further information on the exploration of, and negotiations over, alternatives to compulsory acquisition. Importantly, a joint venture was just one of the proposals made by Prologis to enable the delivery of warehousing and distribution development in this location, collaborating with SEGRO and avoiding the need for application, grant and exercise of powers of compulsory acquisition. Prologis has, throughout, sought to engage constructively and to keep open all reasonable alternatives to the compulsory acquisition of the Prologis/MAG Land. Prologis's objection is directed principally at the substance of the negotiations and the failure to pursue them where it is reasonable to do so, rather than disputing the bare fact that meetings and correspondence took place; the extent to which Prologis disputes the factual chronology, substance or content set out in the applicants' Response to Relevant Representations is addressed below.

It is important to distinguish between two different questions: (i) whether the meetings, correspondence and exchanges chronicled in the applicants' Response to Relevant Representations (DCO 7.2) in fact took place; and (ii) whether what took place amounted to genuine, substantive negotiation, conducted at a suitable point in time in advance of the examination. Prologis's objection is directed principally at the failure by SEGRO to identify solutions to achieve the latter and then to pursue them at a formative stage. It should not be incumbent on a party subject to a prospective dispossession to identify alternatives, when the Government's guidance requires a promoter to explore "all" reasonable alternatives.

In respect of (i), other than as noted below, the existence of engagement as recorded in the Applicant's response to relevant representations is not, in broad terms, in dispute:

Prologis has reviewed the chronology set out in the applicants' Response to Relevant Representations against its own contemporaneous records. A detailed schedule setting out Prologis's account of the correspondence and engagement is provided at Appendix 2. Whilst Prologis does not, as a general matter, dispute that the meetings and correspondence listed by SEGRO took place, there are material differences between the parties as to the substance and characterisation of that engagement. Firstly, there are a number of correspondence missing from SEGRO's own account which are highlighted light blue in the appendix. Secondly, Prologis's records demonstrate that: (i) Prologis repeatedly requested information from SEGRO necessary to progress meaningful negotiations, including viability appraisals and details of SEGRO's arrangements with other landowners, which was not forthcoming until late in the process; (ii) Prologis put forward detailed proposals for alternatives to compulsory acquisition, including the Access Option and Joint Venture structures, which SEGRO either dismissed without proper engagement or failed to respond to substantively; and (iii) where SEGRO did respond, it frequently did so without providing the detail or reasoning necessary to enable genuine negotiation to take place.

Accordingly, Prologis does not, as its principal case, contend that the events listed by SEGRO did not occur. Its case is that those events did not constitute proper, effective or substantive negotiation. It is not enough simply to say that negotiations have taken place. A genuine negotiation requires sufficient information to be available to both parties to make progress and to understand each other's negotiating position, and it must be entered into with an open mind, so that it can properly be described as a negotiation rather than dictation. Negotiation is not a "take it or leave it" approach.

This is illustrated by SEGRO's treatment of the Access Option. SEGRO has dismissed this alternative on the basis that development of the land south of Hyam's Lane in isolation would be unviable. However, as the viability evidence demonstrates, the asserted lack of viability is a function of SEGRO's own commercial decision to commit to acquiring the Aldridge Land at an inflated price. Rather than exploring ways to address that constraint – for example, by renegotiating the terms of its option agreement with Aldridge – SEGRO has simply asserted that the Access Option is not viable and declined to engage further. That approach does not discharge the duty under the CA Guidance to explore all reasonable alternatives to compulsory acquisition. The obligation is not merely to identify alternatives but to take reasonable steps to explore them, which would include at least engagement with Aldridge to discuss such options.

Prologis has put all of the reasonable alternatives it has identified to SEGRO, both through the medium of the examination and privately, including details offered on a without prejudice basis (and not disclosed here) as well as offering to apply flexibility in its approach so as to enable practical solutions to be achieved without compulsion. It has remained willing to engage on each of them. It has consistently signalled that willingness, and negotiations remain ongoing notwithstanding SEGRO's efforts to foreclose them.

The chronology at Appendix 2 demonstrates this continued willingness. By way of example: on 7 March 2025, Prologis wrote to SEGRO setting out four potential options for collaboration, including the Access Option and a Joint Venture, and inviting SEGRO to provide detail on how a Joint Venture would work; on 11 April 2025, Prologis followed up requesting a response; on 9 July 2025, Prologis requested that SEGRO share its viability appraisals in advance of a scheduled meeting; on 17 September 2025, Prologis requested that SEGRO identify specifically what points in the meeting minutes it disputed and provide reasons; on 29 September 2025, Prologis proposed that the parties use the period following the withdrawal of the DCO application to agree commercial terms; and on 4 November 2025, Prologis reiterated its request for SEGRO's appraisals, noting the request had been outstanding for over nine weeks. In each case, SEGRO either failed to respond substantively or declined to provide the information requested.
Measured against the required standard of negotiation noted above, the engagement from SEGRO to date has not been proper, effective or substantive negotiation, for the following reasons:

- The information made available by SEGRO has been incomplete, such that no genuine discussion of the alternatives could take place. For instance, Prologis repeatedly requested SEGRO's viability appraisals and details of its arrangements with other landowners – information essential to evaluating the proposed Joint Venture and Access Option. Despite these requests, and notwithstanding the execution of an NDA in October 2025, SEGRO did not provide its financial appraisals until 17 November 2025, some nine weeks after Prologis first requested them. Key information, including the terms of SEGRO's option agreement with Aldridge, remains outstanding.

- SEGRO has not been willing to grapple with the principles behind the alternatives put forward. When alternative dispositions of development on the Prologis/MAG land were put forward to SEGRO – even before its application - so that access could be provided to the Southern Land, SEGRO did not engage and, in fact, amended its proposals to *reduce* prospective compatibility.

- SEGRO may be able to provide a list of meetings, but the holding of meetings is not, of itself, evidence of genuine negotiation; what matters is whether negotiations were entered into with a genuine intention of reaching agreement.

- The timing of SEGRO's engagement with Prologis is significant. Whilst SEGRO notified Prologis of its intention to make a DCO application in November 2024, no substantive meetings or negotiations between SEGRO and Prologis took place before SEGRO submitted its DCO application in August 2025. The first meeting between SEGRO and Prologis did not occur until 12 February 2025, and meaningful engagement on the alternatives only commenced after the Joint Application was made. By this stage, SEGRO's position was effectively "DCO or nothing", which made it very difficult for SEGRO to take a genuinely open-minded approach to alternatives that did not involve the DCO scheme.

- Indeed, the pattern evident from the chronology is one of Prologis consistently seeking to progress discussions and SEGRO consistently failing to reciprocate. SEGRO repeatedly failed to respond to Prologis's requests for information, failed to provide substantive comments on Prologis's detailed proposals, and ultimately sought to foreclose alternatives it had never genuinely explored. This is not the conduct of a party that has discharged its duty under the CA Guidance to explore all reasonable alternatives to compulsory acquisition.

The duty under the CA Guidance to take reasonable steps to acquire land by negotiation rests with SEGRO as the party seeking compulsory acquisition powers, as does the obligation to explore all alternatives to compulsory acquisition, including alteration of the scheme. SEGRO's unwillingness to negotiate about alternatives which include alterations to the scheme may in part reflect its failure to undertake the process of negotiation and consideration of alternatives at a formative stage, rather than waiting until after the application was made with its scope and parameters effectively fixed. This illustrates and underlines its inability to satisfy the requirements of the CA Guidance. For the reasons set out above, SEGRO has not discharged that duty: the engagement has not been a genuine, informed, open-minded negotiation. The

adequacy of SEGRO's engagement with the alternatives, and the characterisation of the negotiations, are matters that remain in dispute and that call for any evidence offered by SEGRO in response to this question to be thoroughly tested rather than accepted at face value.

Prologis remains willing to continue to engage on the reasonable alternatives and is open to further negotiation.

7.0.4 – *Exercise of compulsory acquisition powers*

Paragraph 1.19 of Prologis's submission in response to action point 2 [REP1-258D] sets out that if compulsory acquisition powers were exercised and the scheme then became undeliverable, there would be no mechanism to restore Prologis' position as there was in Morpeth. Please can the parties explain whether there are any remedies that could be secured in the dDCO, or that already exist in legislation, to restore the position of affected persons in the event compulsory acquisition powers were exercised but the scheme was not then delivered? For example, whilst the Crichel Down Rules apply to public sector bodies, could a version of those rules be tailored to the private developer context and secured by provisions in the dDCO? If a potential remedy could be secured or otherwise exists, how might this affect the assessment of private loss when determining whether compulsory acquisition is justified? For example, would the existence of a remedy mean private loss would be temporary and would this limit the resulting harm compared to permanent private loss?

Response:

There is no existing statutory mechanism that would restore the position of an affected person where CA powers have been exercised but the authorised scheme is not then delivered. Nor would a tailored, private-developer equivalent of the Crichel Down Rules, secured by the dDCO, resolve the issues of concern. Such a mechanism would not address the real harm, would not restore Prologis's position, and should not affect the assessment of private loss or the public-interest balance the SoS must strike.

The Crichel Down Rules ("**Rules**") to which the ExP refers are a non-statutory administrative framework applying to Government bodies and – by convention only – elsewhere in the public sector. They are concerned with the disposal of surplus government land acquired by, or under the threat of, compulsion. They require, as a general rule, that former owners be given a first opportunity to repurchase such land when the relevant department wishes to dispose of it, subject to the land's character not having materially changed and to the specified exceptions in the Rules. They do not assist here as they apply to the public sector and require the exercise of powers – i.e. do not address harm where powers are not exercised. For the reasons set out below, neither would a tailored, private-developer equivalent arrangement secured by the dDCO resolve the issues of concern – even if the substantial and necessary drafting complexities could be overcome. Similarly, Prologis is not aware of any made DCO that has provided for such a buy-back mechanism, which may itself reflect that it is not a suitable means of addressing the loss in question.

The fundamental difficulty with such a mechanism is one of timing. Prologis's loss does not arise only when the land is taken; it crystallises immediately upon the grant of CA powers. From the point of grant, Prologis loses any meaningful ability to implement the Joint Application, and with it the commercial opportunity, the investment already made, and the benefits associated with delivery within the Freeport window.

A right to buy the land back at some uncertain future point (realistically many years after the order is made, once CA powers have been exercised and at an uncertain future date when it is determined the scheme will either not be implemented or will only be implemented to some specified extent) would not restore that position. It is not commercially realistic for a developer to incur a full loss at the point CA powers are granted and then to have no certainty at all as to whether and when it may have the opportunity to repurchase some or all of the land. By then the planning permission for the Joint Application would likely have lapsed, requiring Prologis to begin again in an unknown market and policy environment, the Freeport window would have closed, and customer discussions that Prologis is currently advancing would have been frustrated.

Further, compensation is in any event assessed by reference to market value at a future date – the date on which powers of acquisition are exercised (if indeed they are). An opportunity to repurchase at market value years later does not address the real loss, including lost opportunity, and makes no material difference to the

weight that loss should attract or to the public-interest balance the SoS must strike in deciding the DCO Application.

Therefore, the proper consequence is not to reduce the weight to be given to Prologis' private loss on the assumed basis that it might later prove possible to return the asset that Prologis has lost. In circumstances where the ExP considers non-delivery by SEGRO to be a real risk, the appropriate response is to ask whether CA powers should be withheld rather than to assume that in some way a future buy-back mechanism could cure or materially reduce the harm.

Accordingly, any Crichel Down-style provision would make no material difference to the public-interest balance the SoS must strike in deciding the DCO Application. The absence of any genuine blight, restoration or compensation mechanism underlines the deficiency in SEGRO's case – an applicant for CA powers must clearly identify and assess the private loss as part of demonstrating that the public benefit outweighs it, and SEGRO has not done so.

19.0.12 – Work packages

Other than the current proposals for the 'green' package of works, have the various packages of works shown for the area along the M1 shown on [REP1-054] been identified for other projects. If not, is there any information as to when and how that might occur. The ExP appreciates that this may be difficult to identify, since, for example, for the joint application, at this stage we identified what, if any, highway and transport mitigation works might be necessary.

Response:

The packages of works shown on REP1-054 should not be treated as fixed or committed highway schemes. As Prologis understands the position, they are candidate interventions developed to address longer-term capacity and safety issues at M1 Junctions 23A/24/24A.

Prologis is not aware that the pink, blue or red packages have been identified for any other committed project. That said, the highway mitigation proposed for the Joint Application is directed at addressing the same broad network issues and is most closely aligned with the pink package, which relates to dualling and further works at Finger Farm Roundabout. The Pink Package and the works proposed by Prologis are not exactly congruent – the Joint Application does not propose dualling between Finger Farm Roundabout and Beverley Road Roundabout, nor does it propose works to the M1 mainline.

Instead, the Joint Application proposes an alternative scheme for Finger Farm Roundabout, including a free-flow left-turn movement from the A453 westbound to the A453 northbound, and reserves land along the A453 for potential future dualling to be delivered by others if and when such a scheme is properly promoted. The precise scope of the Joint Application mitigation remains subject to ongoing engagement with the highway authorities.

Prologis is aware that National Highways has issued a holding objection in respect of the Joint Application. That letter helpfully identifies points for clarification in the Joint Application highways work. Whilst the letter was drafted at a point in time, a number of those points have already been addressed. Subsequent meetings with National Highways have agreed next steps to finalise these discussions and draw matters to a conclusion. Whilst Prologis understands that National Highways typically allows a three-month timeframe to conclude such matters, it is accepted by the parties that a conclusion is expected much sooner in this instance.

19.0.18 – Joint Application Mitigation Package

Prologis submits [REP3-061] the mitigation package for the joint application focuses on improvements at the Finger Farm roundabout and provision for dualling on the A453, which is consistent with the wider strategic programme (the "purple" package) and represents an alternative, equally valid, contribution. Please can

National Highways clarify how the joint application mitigation package compares to the EMG2 mitigation package in terms of facilitating enhancements to the SRN. For example, is any one package more important than any other and which would facilitate more significant enhancements to the SRN?

Response:

Prologis submits that it would not be appropriate to draw a direct comparison between the relative importance of the Joint Application mitigation package and the EMG2 mitigation package, or to characterise one package as more important than the other. The two schemes differ materially in scale, and the larger scale of the DCO project necessarily requires more extensive mitigation works than those associated with the Joint Application. A comparison framed in terms of which package is "more important" would not, in Prologis' submission, assist the ExP because the relevant test for each scheme is whether its own mitigation adequately addresses the impacts that scheme gives rise to, not how it ranks against a package responding to different impact.

Notwithstanding the above, the Joint Application delivers tangible benefits to the SRN. These are most evident at the Finger Farm roundabout, but extend further. Outputs from PRTM also indicate that the increased capacity at Finger Farm roundabout helps alleviate some movements at Junction 24, by providing increased capacity on the movement from M1 South to A50 West via the A453. PRTM is forecasting that the Finger Farm highway mitigation works will also lead to further improvements by reducing delay on the M1 Northbound offslip at Junction 24, when compared to the with development (without mitigation) scenario.

In addition, the Joint Application offers considerable benefits to Leicestershire County Council as local highway authority, through relief on the A453 eastbound and the safeguarding of land along the A453 to facilitate potential future dualling. Taken together, these benefits demonstrate that the Joint Application mitigation package represents an alternative, and equally valid, contribution to enhancements of the SRN, consistent with the wider strategic programme.

APPENDIX 1 – Ransom Caselaw

Stokes v. Cambridge Corporation

(REFERENCE No. 148/1960)

LANDS TRIBUNAL

J. R. LAIRD, ESQ., F.R.I.C.S. JOHN WATSON, ESQ., F.R.I.C.S.

November 30, 1961

Compulsory purchase—Compensation—Valuation of land zoned for industry—Deduction for purchase of access—Town and Country Planning Act, 1959 (7 & 8 Eliz. 2, c. 53), Part I.

On a claim for compensation for the compulsory purchase of 12·6 acres of land where notice to treat had been served on March 28, 1960, the parties agreed that planning permission for industrial development must be assumed, subject to conditions requiring satisfactory access to the land and provision of estate roads.

The claimant's first valuer put the value of the land at £112,000 (12·6 acres at £10,000 per acre, deferred two years at 6 per cent.) less £20,850 for cost of roads and sewers and other expenses and less £310 for the acquisition of 0·7 acre of land for an access road; claim £90,840.

The district valuer put the value of the land at £46,400 (11·6 acres at £6,000 per acre, deferred four years at 6 per cent., less developer's profit of 15 per cent.), and deducted £24,224 for roads, sewers, and other expenses, and £9,828 for the cost of purchasing land for an access road; offer £12,500.

Held, (1) in relation to certain sales of land at Coldham Lane, Cambridge, at or about £4,000 per acre, a contention for the claimant that having regard to the history of negotiations between the owners of that land and the local authorities the owners had been led into selling the land at an unduly low figure must be accepted; (2) £7,000 per acre was the correct figure for the acquired land, and the area, from which one acre had to be deducted for roads, was 11·6 acres, and the correct period of deferment, three years; (3) with regard to the land required for access to the land in question it would be a mistake of law to pay any regard to the fact that the corporation were the owners of the access land, but that otherwise the actual position had to be considered through the eyes of a prospective purchaser, and this included the fact that the owner of the access land also owned certain other land then allocated for allotments but which might be re-zoned as industrial, especially if the land now under consideration was developed for industry first; (4) the price of the access land would be £10,411, being one-third of the increase in value of the land acquired attributable to the access; (5) the compensation payable was £23,615 plus interest, with costs on the High Court scale (the sum awarded being greater than that in a sealed offer).

CLAIM FOR COMPENSATION for the compulsory purchase of 12·6 acres of land at Cambridge, part of an area designated by the development plan for industrial development. A compulsory purchase order in respect of the land, confirmed in November 1959,

indicated that the corporation intended to use the land for industrial undertakings displaced under the development plan from other parts of Cambridge. Notice to treat was served on March 28, 1960, and the parties agreed that planning permission for industrial development must be assumed, subject to conditions requiring satisfactory access to the land and provision of estate roads.

D. C. Bain, Q.C., and *R. N. Titheridge* for the claimant, Mr. L. F. W. Stokes.

W. Scrivens for the acquiring authority.

Decision.—This is a reference by the claimant of the amount of compensation payable upon the compulsory acquisition of some 12·6 acres of freehold land forming part of Trinity Hall Farm, Milton Road, in the city of Cambridge.

The land in question is to the south-east of Milton Road, but has no road frontage; the intervening land is also owned by the claimant who has an industrial planning permission in regard to it. To the south-west of the subject land is a housing estate owned by the corporation of the city of Cambridge; for convenience we shall call this the yellow land. To the south-east of the yellow land and south of the subject land are allotments likewise owned by the corporation; we shall call this land the purple land. To the north-east of the purple land and immediately to the south-east of the subject land is yet another area, owned by the corporation, which we shall call the green land: the green land is allocated to allotments but is not yet occupied for this purpose. The northern boundary of the subject land is the railway.

An important issue is access. If and when the subject land is developed for industrial purposes, the planning authority, by direction of the Ministry of Transport, will forbid access from Milton Road, which is a trunk road, through the frontage land owned by the claimant. The only way of getting to the subject land will then be across the yellow or purple land to the south of it. An existing track between the yellow and the purple lands, if the owner of the subject land could acquire it, it could be made into a road giving him access from Green End Road. The track is some 940 feet long and has an area of 0·7 acre; we shall call this the brown strip.

The development plan for Cambridge was approved by the Minister of Housing and Local Government on September 9, 1954.

One of its basic proposals is that Cambridge should remain predominantly a university city; to this end it is proposed, *inter alia*, to limit industrial expansion in and near it. "It is intended," we read in the written statement, "that new industries employing a large number of workers shall not be established in the city, and only a moderate and reasonable expansion of existing industry will be approved." The subject land is part of an area designated for compulsory acquisition for industrial development. In the compulsory purchase order, confirmed by the Minister on November 24, 1959, the purpose is more fully stated as being to make the land available to owners of factories and other industries "which, in pursuance of the development plan, will have to be removed from their existing sites in the city. This will entail keeping in hand a considerable portion of the land for a number of years until the provisions of the development plan come to be implemented." The written statement does not mention access, but the town clerk, in a letter to the claimant's solicitors dated June 2, 1958, touched on this point. "The land," he wrote, "to the south-east of the appeal site (*i.e.*, the green land) is, at the present time, zoned for statutory allotments. Should it prove necessary for it to be rezoned for industrial purposes the city council would, no doubt, provide a proper access from Green End Road." Such an access would also provide access to the subject land.

Notice to treat was served on March 25, 1960, and compensation has to be assessed in the light of the planning assumptions postulated by the Town and Country Planning Act, 1959. These are contained in section 4 of the Act, subsections (2), (6) and (7). Under subsection (2) there is no dispute between the parties that planning permission must be assumed for industrial development. Under subsection (6) it is agreed that the conditions reasonably to be expected include a condition that satisfactory access to the subject land and estate roads within the land should be provided; that planning permission would be given only to firms who fulfil the basic requirements of the development plan; beside the usual conditions about light, design, drainage and services.

Mr. Douglas Lionel January, F.A.L.P.A., senior partner in Messrs. Douglas L. January & Partners, estate agents of Cambridge, was the first of two valuers called for the claimant. He was supported by Mr. Percy Charles Gray, M.A., F.R.I.C.S., F.A.I.; Mr. Gray is senior partner in the firm of Gray, Swan & Cook, also of Cambridge. Mr. January tendered the following valuation:

	£	£
12·6 acres @ £10,000 per acre	126,000	
Defer for two years @ 6% = 126,000 × ·8899964 = £112,189, say		112,000
Less:		
(a) Estimated cost of roads, sewers, fencing, consents and contingencies, as agreed with city surveyor—*less* half-cost of constructing access road from Green End Road to a point where it enters the land to be acquired referred to on plan D.J.1 as R.4 and R.3	24,200	
Less	3,373	
	20,827	
Engineers' and quantity surveyors' fees @ 10%	2,083	
	22,910	
Defer 1½ years @ 6%	·91	
	20,848	say 20,850
		91,150

(b) *Cost of acquiring access road*

(It being assumed for the purpose of this valuation that a fair and equitable approach to this aspect of the matter would be to assess the value of the land required for the proposed access road, and apportion the figure between Stokes, the claimant, and the Cambridge Corporation as owners of the land edged green on plan M.66 which accompanied our letter to the district valuer of March 10, 1961.)

Whereas the valuation dated January 19, 1961, was made on the premise that the land so required was designated under the development plan as "area primarily for residential use" it now transpires that only ·1 acre is so designated, the remaining ·6 acre being designated as "statutory allotments."

The valuation therefore falls to be further adjusted as follows:

Less ·1 acre @ £5,000 per acre	£500		
·6 acre @ £200 per acre	120		
	£620	Half cost =	310
			£90,840

Mr. January's starting price is £10,000 per acre. That is his estimate of the retail price of the subject land, if sold in plots, with direct access from new estate roads to be made by the vendor and with all services available. Mr. January supported this figure by evidence of a number of property transactions in Cambridge between the spring of 1957 and the summer of 1961. Most of them were sales in Newmarket Road at prices ranging from about £10,000 to £40,000 per acre. There was also a sale of land and buildings in Broad Street in July 1960, at a price equivalent to

£15,675 per acre. A site of 0·8 of an acre on the west side of Milton Road, south of the railway and opposite to the claimant's frontage land, was the subject of an offer and acceptance, in 1961, at a price equivalent to £18,700 per acre. Another site of half an acre on the east side of the Cambridge Road in the village of Milton, three miles from the centre of the city and outside the city boundary, was sold in 1961 at a price equivalent to £10,000 per acre: the Cambridge Road is a continuation of Milton Road to the north. We will call the last the red land.

Mr. January explained his deferment for two years by reference to the programme map. The period envisaged for substantially completing the industrial development of the subject land is five years from the date of the plan which was confirmed by the Minister on September 9, 1954. Mr. January said it was reasonable to assume that the subject land could have been fully developed by March 1964, which is four years from the date of the notice to treat. He had, therefore, taken a mean figure. The basic costs of constructing roads, sewers, fencing, and the amounts to be allowed for contingencies and fees, have been agreed, subject to a minor difference about apportionment.

The cost of acquiring the brown strip is a major issue, and Mr. January's assumptions in regard to it are stated in his valuation. It will be seen that he values 0·1 of an acre, which is zoned for residential use, at the rate of £5,000 per acre; he values the remaining 0·6 of an acre, which is zoned for allotments, at £200 per acre.

Mr. Scrivens, counsel for the corporation, called Mr. Arthur Reginald Barton, F.R.I.C.S., district valuer for Cambridge. On the strength of Mr. Barton's evidence, which we will come to in a moment, Mr. Scrivens attacks Mr. January's valuation mainly on the following grounds. It is wrong, he says, to assume a retail sale of 12·6 acres, when one acre would be required for estate roads. A deferment factor of two years is too short. He says it is unrealistic to assume that the owner of the brown strip, who by providing access can put a substantial profit in the pocket of the owner of the subject land, would sell land for this purpose at no more than its market price for housing or agriculture. Finally, he claims that the valuation is faulty because it makes no allowance for developer's profit.

Here is Mr. Barton's valuation of the subject land; to simplify comparison we reproduce it in the same form as Mr. January's valuation:

		£	£
11·6 acres @ £6,000 per acre		69,600	
Defer four years @ 6%	Years purchase	·79	
Value of deferred realisation		54,984	
Less developer's profit, etc., @ 15%		8,247	
For 11·6 acres		46,737	
But say @ £4,000 *per acre*			46,400
Deduct:			
(a) *Estimated cost of roads, sewers, fencing, consents and contingencies:*			
	£		
Construction	24,200		
Engineers' and quantity surveyors' fees 10%	2,420		
	26,620		
Defer 1½ years @ 6%	·91		
			24,224
Value of land with necessary access for industrial development			22,176
(b) *Estimated cost of purchasing access for industrial development:*			
	£		
(i) Value of land with necessary access	22,176		
Less (ii) Value as accommodation land, 12·6 acres @ £200 per acre	2,520		
Increase in value due to access	19,656		
Allocate one-half for purchase			9,828
			£12,348
			Say £12,500

It will be observed that Mr. Barton assumes a smaller area available for sale retail, namely, 11·6 acres. His starting price, comparable to Mr. January's £10,000 per acre, is £6,000 per acre. He defended this by evidence of three sales of land in Coldham Lane, Cambridge, in 1959 and 1960. The validity of these prices, as a guide to the value of the subject land, is keenly contested by the claimant: we shall return to it later.

The other major difference between Mr. Barton and Mr. January is in the price a developer of the subject land would have had to pay the owner of the brown strip for the right of access. Mr. Barton says that in circumstances like these the owner might be expected to demand half of the development value: by development value we mean the increase in value of the land created by the access. He says, further, that the owner of the yellow, purple and green land would have contributed nothing to the cost of making the road.

The issues we have to determine are accordingly these. *First*, what was the retail value on March 25, 1960, of the subject land per acre for industrial development; was it £10,000, as suggested by Mr. January and Mr. Gray, or £6,000 as estimated by Mr. Barton? *Secondly*, what area should be so valued? *Thirdly*, should the retail value of the land be deferred for two years or four years? *Fourthly*, what would a purchaser at the material date have allowed for the cost of acquiring access? *Fifthly*, who would have paid for making the access road?

We have viewed the subject land and most of the sites which the valuers on both sides referred to as comparisons. Having done so, we are satisfied that the claimant's figure of £10,000 per acre is not supported by evidence: still less is it supported if an allowance is made for developer's profit which, in our opinion, would be academically correct. The sales in Newmarket Road are of little help: all these sites are more centrally situated than the subject land, and we are left in no doubt that Newmarket Road has a publicity value, whether or not the actual purchasers wanted it. A combination of these factors has created in Newmarket Road a higher level of value than that of the subject land, which has no road frontage and is further from the centre of the city. The sale of the red land is of considerable assistance and we shall return to it later, but it does not support Mr. January's figure of £10,000 per acre for the subject land. The site in Milton Road opposite to the claimant's other land had not been sold at the time of the hearing; it was merely the subject of an offer and acceptance dependent upon contract, and for this reason we disregard it.

The district valuer's estimate of £6,000 per acre is supported, according to his evidence, by the sales of land in Coldham Lane; and the claimant's valuers agree that the subject land and the Coldham Lane land, although in different parts of the city are, in many respects, similar. They concede, but for a restriction created by an undertaking given at a planning inquiry, which we shall discuss presently, that the two pieces of land might have been expected to sell in the open market at the same basic price. To the question "If it was not for the restriction the two pieces of land would have been the same?" Mr. Gray answered "Yes."

It is important to note that the Coldham Lane land lies between Coldham Lane and a road called Church End; it has frontages to both. Thus it would be possible to develop it in one-acre plots without the cost of making estate roads. This being so, it appears to us that the prices obtained per acre in Coldham Lane are to

be compared with the district valuer's £6,000 per acre for the subject land.

The claimant contends that the prices actually obtained in Coldham Lane are misleading because of special circumstances which attended the sales. This contention was supported by evidence from Mr. Gray which occupied a large part of the five-day hearing: it is necessary that we should now deal with it at some length.

The land with frontage to Coldham Lane was divided for the purposes of sale into four plots. Plots A and C each had an area of four acres; plot B of three acres; plot D of about one-and-a-half acres. The whole of the land was zoned for industry and designated in the development plan for compulsory purchase; it was programmed for development during the first five years beginning in 1954. When, in 1956, the corporation promoted a compulsory purchase order, the owner objected. This led to a public inquiry on March 20 of that year, at which the corporation said they needed the land for the relocation of industry to be removed from other parts of the town, for suitable applicants of whom they had approved, and for others whom they might approve. The owner replied that he could sell the land for these purposes as effectively as the corporation.

On May 6, 1956, the owner died. On June 19, the Minister refused to confirm the compulsory purchase order. He recorded that the owner had been "prepared to give an undertaking to sell the land only to firms approved by the council"; further, that he, the Minister, had "noted particularly the owner's willingness to allow the land to be developed for industrial purposes—the purposes for which it was allocated in the approved development plan." These purposes are defined on page 4 of the written statement as follows: "Land has been allocated on the town map for the relocation of existing factories which are badly sited or require room for expansion and for the introduction of new industry including workshops and storage yards."

Thereafter, the corporation proposed that the executors of the late owner should enter into an agreement to implement the undertaking; but it soon emerged that they interpreted the undertaking differently. The executors claimed they were only under an obligation to offer the land for sale to the corporation's nominees in the first instance: if there were no nominees or if the nominees failed to buy, they were free to sell to anyone who had planning permission. The corporation took the view that the undertaking gave them a *veto*: no sale might be effected save to a firm approved by them, and they said they would only approve firms which had

to be relocated because of planning disturbance. They conceded this might mean a portion of the land remaining vacant for a long time; but, they said, the relocation of existing industries in Cambridge was likely to be a slow business, and this was how they themselves, had they been permitted to acquire the land, would have developed it.

The executors were doubtless relieved when the Minister removed the threat of compulsory purchase in June 1956. That date was well before the passing of the Town and Country Planning Act, 1959, and a valuation of the land for estate duty at £10,500 had suggested to them that this was the most they could expect to obtain from the corporation. They now decided to try to sell the land privately and their first step, in compliance with the undertaking, was to ask the corporation for the names of firms they would approve as purchasers. The corporation who, at the inquiry in 1956, had said they had "a large number of applicants for industrial sites," supplied the names of only two firms—Messrs. Johnson & Bailey and the Simplex Dairy Equipment Company; each required four acres. The executors' next step, with a view to selling to one or both of these firms, was to submit a projected layout of the land to the county council, in its capacity as town planning authority; that was on November 14, 1956. This layout was in fact a copy of one which had been prepared earlier by the corporation's surveyor.

On January 9, 1957, there was an interview between the county planning officer and the executors' surveyor, Mr. Gray, at which, according to Mr. Gray, the planning officer gave him to understand that in certain circumstances the industrial zoning of the land might be cancelled; Mr. Gray took this as a "veiled threat." On February 4, the matter apparently being no further advanced, Mr. Gray wrote to the county planning officer on behalf of the executors to inquire what was happening. This letter was not acknowledged. He wrote again on March 5, and on this occasion received a non-committal reply from the planning officer which said, amongst other things, "in one of the cases affecting the Coldham Lane site, we are negotiating for the movement of the industry out of Cambridge altogether." As Mr. Gray had reason to think that this was one of the two firms, nominated by the corporation, to whom he had been trying to sell four acres, the information was cold comfort.

However, he continued to press the county planning officer to approve the layout. There was a further meeting on August 30, when the planning officer again referred to the possibility of the land being dezoned for industry. On September 11, 1957, the county

planning committee considered the application. It was not until October 8, 1957, more than ten months after Mr. Gray had submitted the application, that he obtained any clear indication of the county council's attitude. The planning officer wrote to say his committee were not prepared to approve the development of the estate as a whole, but would only entertain individual applications. To assist the owners, within the terms of the industrial policy, the planning committee gave him the names of five firms to whom they suggested he should offer the land. One of them was Messrs. Johnson & Bailey, whom the corporation had nominated and with whom Mr. Gray was already in negotiation. Another was the Postmaster-General, who had been negotiating for some time the purchase of plot D where he was already a tenant. The remaining three firms mentioned in the planning officer's letter were hitherto unknown to Mr. Gray; they included a firm called W. J. Adkins. Simplex, the second nominee of the corporation, was not mentioned.

Mr. Gray concluded that Simplex was in process of being re-housed elsewhere; so in its place he chose W. J. Adkins and opened negotiations. In January 1958 he was successful in obtaining two offers, subject to contract, which he accepted: from Messrs. Johnson & Bailey £10,000 for the purchase of the four acres comprising plot A; and the same price from Messrs. W. J. Adkins for the four acres comprising plot C. He continued his negotiations with the Postmaster-General.

But sales to W. J. Adkins and the Post Office, notwithstanding they had been suggested by the county council, had still to have the approval of the corporation. There ensued a correspondence between Mr. Gray and the town clerk, at the end of which the corporation approved the Post Office but declined to approve W. J. Adkins. So, W. J. Adkins were turned down. In September 1959 the sale to Messrs. Johnson & Bailey, negotiated twenty-one months before, was completed; the negotiations for the sale of plot D, a relatively small area with some buildings on it, went on. In the autumn of 1959 the owners were left with plot C and plot D on their hands and no approved applicants.

In the meantime the solicitors for the executors had been corresponding with the town clerk about the proposed agreement. They submitted a first draft on April 4, 1957, and had no more news of it until October 8 when the county planning officer wrote to say it had been passed to him. In November 1957 they began sending reminders to the town clerk, but letters, dated November 29, 1957, December 19, 1957, and January 8, 1958, were not acknowledged. A further letter to the town clerk, dated January 18, 1958, brought

a reply containing a number of proposed amendments to the draft agreement they had submitted some nine months before. They refused to accept them. The correspondence dragged on until both parties wrote to the Minister in the hope of ending a deadlock; they exchanged copies of what they had written. The town clerk's letter to the Minister dated August 26, 1959, contained an inquiry "whether the Minister would be willing to accept a further application for the confirmation of a compulsory purchase order." This, said Mr. Gray, "frightened the owner to death." The Minister replied in similar terms to both parties; he regretted that, because of his appellate capacity, it would be improper for him to express any opinion at all. In the long run no agreement was signed; the owner instead, on July 14, 1959, served unilaterally on the corporation an undertaking which appears to have left them as dissatisfied as ever.

On October 21, 1959, the executors' solicitors wrote to their surveyor, Mr. Gray. They suggested that in all the circumstances their client's best course would be to try to sell the rest of the land—plots B and C—to the corporation at the same price per acre as they had sold plot A to Messrs. Johnson & Bailey. But by this time the Town and Country Planning Act, 1959, had been passed; at some date in October or November 1959, before an approach had been made to the corporation, Mr. Gray succeeded in selling the three acres comprising plot B to Messrs. Winton-Smith for £11,500. The corporation do not appear to have given formal approval to Messrs. Winton-Smith; but they were aware of the transaction and did not disapprove. Thereafter, the four acres comprising plot C were sold to the corporation at a price equivalent to £4,000 per acre.

These are the facts upon which Mr. Bain invited us to conclude that the sales of this land in Coldham Lane were at prices below the open market value. The undertaking given at the public inquiry; the construction placed upon it by the corporation; the inconsistency between the corporation and the county council in the matter of nominating purchasers; the unexplained delays; the "veiled threats" of dezoning; the dilatory way in which both these authorities conducted their correspondence: a combination of these things, he said, were frustrating to the owners and their advisers, and implanted in their minds a strong suspicion that they were being deliberately obstructed by one or other of the authorities—or by both.

Having regard to the criticisms of the procedure of the county council, in their capacity as town planning authority, we think it

regrettable but, perhaps, significant, that no evidence was called to explain it. The sales of the land in Coldham Lane are vital to the corporation's case; therefore, we have to decide whether this sequence of events was likely to create such a suspicion, well-founded or not, in the minds of reasonable people—which we conceive the executors and their advisors to have been. We are satisfied that it was. We think there is every probability that they were induced to sell some, if not all, of their land in Coldham Lane at such prices as they could get in a market which appeared to them unreasonably and unwarrantably restricted. On the face of it, after the passing of the 1959 Act, the executors had nothing to fear from a new compulsory order. We think, however, that by this time their patience was exhausted: their attitude was, in Mr. Gray's words, "Let us get rid of the whole unpleasant affair and let us offer the whole of the rest at a rate *pro rata*."

It is important to note that even if the price of £4,000 per acre in Coldham Lane was unduly low, because of the restriction on that land deriving from the undertaking and the other matters we have mentioned, there is still a margin of £2,000 per acre between this price and the price of £6,000 at which the district valuer has assessed the subject land. He described the transaction in Coldham Lane as his sheet anchor. Why then, we ask ourselves, has he valued the subject land at so much more than the highest price this allegedly comparable land was sold at? If, as would appear, he thought there should be a margin, why such a substantial margin and how was it calculated? Was the margin substantial enough? The evidence provided no anwers to these questions and we ourselves are unable to answer them. Taking all these circumstances into account we have come to the conclusion that the prices obtained for the land in Coldham Lane are unreliable as a guide to the value of the land we are concerned with, and we shall pay no regard to them.

In our opinion the best guide is the price paid for the red land, where the sale was untainted. Mr. January said it was his most useful comparison; Mr. Gray said it was the second-best comparison; the district valuer conceded that it was the best comparison after Coldham Lane. The red land has an area of half an acre and is on the east side of the Cambridge Road, a little more than half a mile north of the subject land. It has 100 feet of main road frontage and some publicity value because of it; but the only permitted access is from the rear, over a road to be made by the vendor, and it is near the corporation sewage works and further from the centre of the city than the subject land. Upon the evidence and in

the light of our inspections we are satisfied, taking all these considerations into account, that the two sites are comparable. In March 1961 an offer was made and accepted of £5,000 for this half-acre of red land, subject to a town planning consent for a use limited to the storage of industrial plant. The consent has since been obtained and the purchase completed.

We also gain assistance from a letting of some back land in Newmarket Road, for twenty-one years from Christmas 1960, at a rent of £650 a year. The landlords were the corporation; Mr. Gray considers this his most useful comparison. The area was a little under one acre, and the district valuer concedes that the rent fixed was equivalent to a sale of the freehold at the same date for a price equivalent to £10,000 per acre. Allowance must be made for rising land values between the date of service of the notice to treat and the dates of these transactions.

Upon the evidence generally, but mainly in the light of these comparisons, we have come to the conclusion that Mr. Barton's estimate of £6,000 an acre as the retail value of the subject land is low: it may be significant that he made his valuation before the red land was sold. For the £6,000 in his computation we shall substitute £7,000. Obviously, the land to be sold at this price is that which remains after the roads are constructed; Mr. Barton's area of 11·6 acres is, accordingly, correct.

Should the deferment of the retail value be for two years or four years, as the mean of four years or eight years, or for some other period? We think it depends less upon the indications in the programme map than upon the realities of the position in March 1960. More than five years had passed since the confirmation of the plan, which had allocated certain lands for industrial purposes; they included the subject land of twelve and a half acres and the eleven acres in Coldham Lane. Of the latter, some seven acres had been sold to Messrs. Johnson & Bailey and to Winton-Smith. Mr. Barton, in answer to Mr. Scrivens' question, "Why do you envisage eight years as against Mr. January's four years?" said:

> This is a matter on which one obviously cannot be too dogmatic. I have thought a good deal about it, and in the very early stages I inquired through the city surveyor's department what might be the prospective time for filling up this land if it were used entirely for relocation of displaced firms. On the rate of the programme then to be seen, it appeared that if it were restricted to such sort of development—the firms at present being displaced, quite largely comprising smaller areas—it might well be fifteen years to take up this whole twelve acres or thereabouts. But in view of the fact that we must take into account not only the displaced firms who have to be relocated, but any new industries or expanding industries which can get through the rather fine sieve of the Cambridge

planning policy, and also in view of the fact that this is not quite the only land that will be available—if not at present, then in course of time will be available—I thought it fair and reasonable to halve this figure of fifteen years and call it eight years. Hence my adoption of four years for deferment.

But why, we ask ourselves, if Mr. Barton defers for four years, based on his estimate of eight years to complete the development, does he defer the cost of making estate roads, of sewers, fencing and so on, only one and a half years? Would any developer spend £24,224 in three years in anticipation of a development which would take as long as eight years to complete? We think not.

In all the circumstances we have come to the conclusion that Mr. January's period of two years is too short, and Mr. Barton's four years too long. We find that the correct period of deferment is three years.

Now we come to the vexed question of access. We dismiss at once, as unrealistic, Mr. January's suggestion that the owner of the brown strip would be willing to sell it to a prospective developer of the back land at no more than its bare price for housing or agriculture. Manifestly, the owner of the front land, aware that he held the only key to the development of the back land, would expect to receive a substantial share of the profit which, if he withheld the key, would be unobtainable.

A major issue is what factors the Tribunal is entitled to take into account. According to Mr. Bain, for the claimant, we are entitled to take into account the special circumstances that the corporation are the owners of the land across which the access is required; of the purple land to the south of it which they use for allotments; of the green land north-east of the purple land, which is not yet occupied as allotments but is allocated to that purpose. Mr. Bain says a prospective purchaser would know of these ownerships. His inquiries would reveal that the corporation were eager for the industrial development of the subject land in accordance with their plan. He would expect the corporation to co-operate in providing access to the land which they were anxious to see developed.

Then there was the future of the green and purple land. Mr. Bain suggests, because of its position, there is every chance that sooner or later the green land will be rezoned for development by the corporation themselves as their own industrial estate, after they have developed the subject land. He says a prospective purchaser would have had that possibility in mind, and would have realised that a road through the brown strip would give access to the corporation land as well as to his own. For all these reasons, says Mr. Bain, he would have expected to buy his access reasonably.

Mr. Scrivens, for the acquiring authority, submits that the fact the corporation own the brown strip is irrelevant and should be ignored. It would be wrong in law, he says, for the Tribunal to take into account any possibility of rezoning; the existing zoning of the green and purple land for allotments is all we are concerned with. We should also be wrong, he warns us, if we were to take into account any predilections the Corporation may have towards the industrial development of the subject land or any other land in their capacity as delegates of the town planning authority.

The value we have to determine is that of the subject land in the open market at the date of service of the notice to treat, subject to the statutory considerations. That value largely depends upon the price a prospective purchaser at that date would have expected to pay for access. There are thus two hypothetical transactions, one depending upon the other. The primary transaction is the purchase of the subject land itself; the secondary transaction, without which the primary transaction cannot fructify, is the purchase of the brown land. It is implicit in the rules under the 1919 Act that in relation to the primary transaction the identity, resources or motives of any particular vendor or purchaser must be ignored; the value to be determined is the value in the market. But there is no market for this access, except to a prospective developer of the subject land.

We hold we should be wrong in law to pay any regard to the fact that the corporation, who are at once the acquiring authority and the town planning authority, own the brown strip. Apart from that, we consider we are entitled—indeed, we are required—to view the actualities through the eyes of a prospective purchaser of the subject land at the material date: to note that the owner of the brown strip is also the owner of the green and purple land; that planning is fluid and open to review from time to time; that at some future date the green and purple land, now allocated to allotments, may be rezoned for industry—as has already happened elsewhere in Cambridge; that the likelihood of such rezoning will be increased if the subject land is developed for industry first; that accordingly there is an inducement to the owner of the brown strip to sell it as access in order to expedite, in his own interests, this sequence of events.

In the light of these considerations we think a prospective purchaser of the subject land would be more optimistic about the price he would be obliged to pay for access than is the district valuer. The exact proportion of the eventual profit he would

expect to pay away is a matter for conjecture, but in all the circumstances we think a half is too much; we shall substitute one-third, on the basis that the corporation would not contribute to the cost of roadmaking.

Our award is £23,615, which we arrive at as follows:

	£	£
11·6 acres @ £7,000 per acre	81,200	
Defer three years @ 6%	0·84	
Value of deferred realisation	68,208	
Less developer's profit, etc., 15% of £68,208	10,231	
	57,977	
Deduct estimated cost of roads, sewers, fencing, consents and contingencies	24,224	
Value of land with necessary access for industrial development		33,753
Deduct estimated cost of purchasing access for industrial development		
Value of land with necessary access	33,753	
Less value as accommodation land, 12·6 acres @ £200	2,520	
Increase in value due to access	31,233	
Allocate one-third to purchase of access		10,411
		23,342
Add claimant's surveyor's fees in accordance with scale 5A of the scale of charges of the Royal Institution of Chartered Surveyors		273
Total compensation		£23,615

Mr. Bain asked for interest upon the amount of the award under Rule 46 of the Lands Tribunal Rules. Mr. Scrivens opposed the application. We think, however, that the application is justified, and we order that our award shall carry interest, with effect from today, at such rate as may be prescribed by Treasury regulations from time to time.

A sealed offer was opened after this decision was read, and the amount was less than the amount we have determined. In these circumstances the compensating authority will pay the claimant his costs to be agreed or, in default of agreement, taxed by the Registrar of the Lands Tribunal on the High Court scale.

Orders accordingly.

Solicitors—Ellison & Co., of Cambridge, for the claimant; the Town Clerk of Cambridge for the acquiring authority.

C2002/1122,
Neutral Citation Number: [2003] EWCA Civ 188

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE LANDS TRIBUNAL

Royal Courts of Justice
Strand,
London, WC2A 2LL

Thursday 20th February, 2003

B e f o r e:

LORD JUSTICE ALDOUS,

LORD JUSTICE CARNWATH

AND

SIR DENIS HENRY

– – – – – – –

RAILTRACK PLC (IN RAILWAY ADMINISTRATION)

Appellant

– v –

GUINNESS LIMITED

Respondent

– – – – – – – – –

(Transcript of the Handed Down Judgment of
Smith Bernal Wordwave Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr Robin Purchas QC and Ms Joanna Clayton (instructed by Rees and Freres) for the Appellant
Mr Brian Ash QC and Mr Peter Village QC (instructed by Herbert Smith) for the Respondent

J U D G M E N T
As Approved by the Court

Lord Justice Carnwath :

Introduction

1. This is an appeal against a decision of the Lands Tribunal exercising its arbitration jurisdiction. The dispute arose out of a major development at Park Royal in West London, on land mainly owned by Guinness Ltd, the Respondent to the appeal. The development requires an access road direct to the A40, running over railway lines owned by Railtrack and London Underground. Negotiations for the consideration to be paid by Guinness, for the air rights needed for the construction of the road, led in due course to an agreement to refer this issue to the Lands Tribunal under a so−called "terms of reference agreement" dated 16th May 2000 ("TOR"). The TOR set out the assumptions on which the Tribunal is to proceed (which differed in some respects from the ordinary law of compensation - see below).

2. The wide gap between the parties is apparent from the fact that, by the time the case reached the Tribunal, the claim was put at over £33m, while the evidence on behalf of Guinness supported a figure of just over £1.5m. After a hotly contested hearing lasting over 21 days and including evidence from 25 witnesses, the Tribunal issued a reasoned decision, running to 300 paragraphs, with appendices. I would pay tribute to its clarity and comprehensiveness. They determined the value of the rights as £5m. That decision was issued on 11th February 2002. The last paragraph indicated that it "concludes our determination of the substantive issues in this reference"; but that it would "take effect as a decision" only when the question of costs had been decided, from which point the right of appeal would come into operation.

3. The costs issue was finally determined on 29th April 2002, following an exchange of written representations. In an addendum dealing with that issue, the Tribunal made clear that it had regarded the approach of the claimants as "lacking restraint and judgment", particularly against a background that in late 1999, on the basis of the advice of their then valuers, they had offered to settle for less than £10m. The Tribunal also regretted that agreement on so many matters had proved intractable, and that the parties found themselves in conflict at so many points. Taking account of those matters, the Tribunal made no order as to costs.

4. Although this was an arbitration, it is accepted that it is subject to the ordinary Lands Tribunal procedure for appeals to this Court, (and is not, for example, subject to the special rules in section 69 of the Arbitration Act 1996). Although appeals from the Lands Tribunal were formerly by case stated, they now take the form of appeals on a point of law under CPR Rule 52 (Lands Tribunal Act 1949 s 3(4), as amended by Civil Procedure (Modification of Enactment) Order 2000). Permission to appeal is required from this Court (see *Girls' Day School Trust -v− Dadak* 15.3.2001 per Robert Walker LJ).

5. The matter first came before me on a paper application for permission to appeal on 26th June 2002. There were four grounds. I granted permission on the first, but refused on the other three grounds. On the renewed application, I confirmed the refusal of permission on grounds 3 and 4, but adjourned the application on ground 2 to come on with the substantive hearing on ground 1. In doing so, I made clear that I was unpersuaded that there was "any error in the Tribunal's approach, let alone one of law", but I was concerned that, on the

material available (largely computer−generated), I had been unable to satisfy myself fully on the analysis of the figures. I invited the parties to attempt to put the relevant calculations into comparable and simplified form, and to entrust the task, not to a computer, but to "a reasonably numerate human−being".

6. Accordingly two grounds of appeal remain live before us, the second still requiring permission, in summary:

i) The Tribunal failed to assume a sale by "a willing seller", but instead assumed a sale by "a company regulated and subsidised by central government and subject to the political pressures as were the Claimants themselves" (the "Willing seller issue").

ii) The Tribunal erred in "determining to allow deductions on account of ‘profit' which considerably exceeded even that for which the Respondent was contending×" (the "Profit/risk issue")

We indicated at the outset that we would deal with the question of permission to appeal on the second issue as part of this judgment

7. The claim was made jointly by Railtrack and London Underground, but London Underground are not parties to this appeal. It is not suggested by either side that the issues in the appeal are affected by the fact that only one of the claimants is a party to the appeal.

The Tribunal's reasoning

8. In view of the relatively narrow scope of the two outstanding grounds, it is unnecessary for the purpose of this judgment to set out the facts in any detail, nor to review most of the very complex valuation exercise conducted by the parties and the Tribunal.

9. The proposed development was described by the Tribunal as follows:

> Guinness, with a development partner, London and Regional Properties Ltd ("L&R"), is carrying out a major development and part−redevelopment of a substantial part of its land. This development, known as the First Central scheme, will involve the construction of 116,100 sq m of Class B1 offices, 61 residential units, a 150−bed hotel and indoor leisure facilities. Planning permission was granted on 15 July 1999. The development also includes the construction of a new road into the site from a new junction to be formed on the A40, and a new underground station on the Central Line. The road is being constructed partly over railway tracks and other land owned by the claimants and partly on land owned by Guinness. Because buildings at the brewery need to be demolished to make way for the scheme, new buildings and plant are required to replace them. The new access, together with an associated road improvement called the Concord Avenue Link, will improve the accessibility of the western part of Park Royal industrial estate and is expected to produce regenerative benefits. A Single Regeneration

> Budget grant of £12.252m has been approved by central government and a £4.9m interest−free loan has also been negotiated with English Partnerships."

10. It was common ground that the value of the access rights should be determined by a "residual" approach: that is, assessing the fully developed value of the land with the benefit of the access rights, and deducting the construction and other costs involved in achieving that value, and then comparing it with the value of the land without those rights. The difference, subject to some incidental additions and adjustments, gave the extra value assumed to be released by the acquisition of the access rights, of which 50% was treated as the claimant's share, or "open market value of the rights". The Tribunal had also found admissible, and therefore had before it, evidence of the figures which had in fact been discussed by the parties, in negotiations prior to the reference.

11. The respective valuations descended to an impressive degree of detail, requiring computer assistance. (For this purpose, Railtrack used a computer programme, known as the "Circle Systems" programme.) The examination of the respective residual valuations required the Tribunal to resolve a wide range of detailed issues, most of which are irrelevant for present purposes. Having resolved these issues, the Tribunal, with the agreement of the parties and the help of a neutral expert, used the Circle Systems programme to assist them in performing the calculations. This led them ultimately to assess the "open market value" of the rights at £5m, and, having also looked at the figures discussed in the actual negotiations, they concluded that the figure of £5m was "one that the parties would have agreed" (para 288).

The willing seller issue

12. This issue concerned the Tribunal's application, to the somewhat special facts of the case, of the "willing seller" principle under section 5(2) of the 1961 Act. That section provides:−

> 5. Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:
>
> ×..
>
> (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land *if sold in the open market by a willing seller* might be expected to realise×" (emphasis added)

13. I have already noted that the assumptions set out in the TOR differed in some respects from ordinary compensation principles. For present purposes, it is sufficient to refer to the Tribunal's summary:

> 41. The rights are defined to mean Railtrack's proprietary rights in Coronation Road, the rights to construct, maintain and use the link road across the railways, and the land required for construction of the underground station. The rights were the subject of two Deeds of Grant, of the same date as the Terms of Reference agreement.

> 42. Specific assumptions as to the basis of valuation are set out in clause 8. They include the following. Valuation date is 16 May 2000. It is to be assumed that the rights had been acquired compulsorily under Part IX of the Town and Country Planning Act 1990 for the purposes of the Scheme, and that they had been acquired at market value. Rule (3) in section 5 of the Land Compensation Act 1961 is disapplied, and it is provided that the *Pointe Gourde* principle does not apply so as to exclude consideration of the proposed development of land owned by Guinness, its parent company Diageo PLC or any other company in the group or any other land. Account may be taken of the fact that Guinness/Diageo own land beyond the scheme land. No set−off for betterment is to be made in relation to any new station constructed as a requirement of a planning obligation, but betterment to the scheme arising in other ways can be taken into account"

14. The assumption that the land had been acquired compulsorily under the Town and Country Planning Act 1990 carried with it the implication that the rules in the Land Compensation Act, including rule (2), would apply, save as varied by the TOR. As to that the Tribunal said:

> 43. Under rule (2) of section 5 of the 1961 Act the value of the land is the amount which the land if sold in the open market by a willing seller might be expected to realise. There is no dispute between the parties that any purchaser who, in the real world, might be a bidder for the land can be taken into account as forming part of the market, and that Guinness, and indeed London and Regional, could thus be regarded as potential bidders. In fact, the evidence on both sides effectively assumed that Guinness would be the purchaser in this hypothetical transaction."

15. More specifically, in relation to rights over the railway, clause 8((c) of the TOR required the Tribunal to determine the Dispute on the basis (among other points) that:

> × the Rights had been acquired on the basis of the open market value of the Rights required for accesses over the railway."

16. The nature of the dispute which underlies the first ground of appeal, and the Tribunal's conclusion on it appears from their decision:

> 44. The parties disagreed about the assumption that should be made about the vendor. Mr Purchas submitted that rule (2) required the assumption that the vendor is a hypothetical vendor. Thus there were to be excluded from consideration the personal characteristics of the actual vendor that might affect the negotiations, including any particular obligations or pressures to which he might be subject. Mr Ash submitted that, while it is right that the vendor is hypothetical, what is being sold − air rights over a railway line − is not. The hypothetical vendor should therefore be understood to be a hypothetical railway infrastructure company×.
>
> 45. We agree with Mr Ash's submission×

> 46. The correct assumption, in our view, is that the hypothetical vendor would be a company or authority with the function of maintaining the track and associated permanent features of a railway system. In the real world, such a company or authority would be regulated and subsidised by central government, and would be subject to pressures, in relation to a project like the present, of a sort that can be termed political. We can see no reason for disregarding these realities. At the same time the company or authority would be concerned to extract a proper value for the rights that it granted. It would not see its role as subsidising the development or any part of it. Railtrack and LUL in the real world thus seem to us to be reasonably representative of the hypothetical vendor, and we think it clearly relevant, therefore, to have regard to the negotiations that actually took place between the parties."

17. As appears from the last comment, the practical significance of this point lay in the extent to which the Tribunal could gain assistance from the figures put forward by Railtrack's representatives in the actual negotiations. Later in the decision, the Tribunal explained the use made of that information:

> 91. We have said that Railtrack and LUL in the real world seem to us to be reasonably representative of the hypothetical vendor, while the evidence on both sides assumes that Guinness would be the purchaser in the hypothetical transaction. The evidence on the negotiations between the parties on the price for the rights was ruled to be admissible, and we have had regard to it. While it has played no part in the residual valuation that we, adopting the method of the parties, have followed, it does in our view provide some confirmation of the result that we have arrived at."

18. They referred to the evidence of negotiations between June and December 1999, which had culminated in an apparent offer by Railtrack to sell the rights for £9.7, and to the evidence from Mr Kirby (sales director of Railtrack) of the circumstances in which those offers had been made. They commented:

> 92. Mr Purchas, relying on the evidence of Mr Kirby, said that the offers, and in particular the offer of £9.7m, were the result of the political pressure that was being applied to Railtrack and LUL. While we have little doubt that the desire to achieve the regeneration of Park Royal through the Guinness development led to pressure on Railtrack and LUL to reach a settlement, we see no reason to suppose that this pressure exceeded what a hypothetical vendor would have been subjected to. Indeed we have concluded that Railtrack and LUL were representative of the hypothetical vendor."

19. They rejected a suggestion by Mr Kirby that the apparent offer was not a real one. They said:

> 95× In our view it represented the amount that Railtrack and LUL, on the basis of professional advice and after months of negotiation, were prepared to settle for. At the stage at which the offer was made

> neither party had carried out the extremely detailed and sophisticated calculations on which their evidence before us was based. But they had made assessments of the sort that, in the world of commercial negotiations, would normally be sufficiently detailed to enable agreement to be reached. We consider that the offers made in November and December 1999 suggest that the price now contended for by Railtrack/LUL is very substantially too high, and that the value that we have arrived at is one that would have been reached between a willing buyer and a willing seller."

20. Finally, at the end of their decision, having arrived at the valuation for the rights of £5m, they said:

> 288 Having arrived at this figure we have thought it right to take an overall view in the light of all the factors bearing upon the hypothetical negotiations, including the bargaining position of the parties, and the negotiations that actually occurred and to consider whether the amount is the one that the parties would have agreed. We are satisfied that it is×."

21. Before us Mr Purchas submitted that this approach was wrong in law. He said that the principle underlying rule (2) was that the market value should not be affected by the particular characteristics of the actual vendor, including any personal proclivity for or resistance to sale. The objective was to determine what the market would pay irrespective of any individual or personal factors special to the actual owner and vendor. The Tribunal had wrongly made the assumption that the vendors of the access rights were effectively Railtrack and LU, and were thus unduly influenced by their particular corporate characteristics and their particular financial position and control. The Rights should have been valued as if put on the market by a hypothetical vendor, not subject to the pressures and considerations which affected Railtrack and LUL.

22. For Guinness, it is submitted that it would have been wholly unreal for the Tribunal to ignore the fact that what was in issue was the value of rights over a railway line, and would therefore be owned by a railway company. The Tribunal were entitled to find as a matter of fact that the negotiations were reasonably representative. In any event, even if this ground of appeal were correct, it would have made no difference. The Tribunal's award was based on its own residual valuation, which was not directly affected by the evidence of the negotiations.

23. Both parties relied on Trocette Property Co Ltd v Greater London Council (1974) 28 P&CR 408. In that case, claimants held property on lease from the predecessor of the GLC, which had only a few years to run, but which had substantial development potential if an extension were granted. One issue was whether, in assessing compensation, the Tribunal should take account of the known unwillingness of the GLC as lessor to grant an extension, or whether it should consider the likely position of a hypothetical lessor. The Court held that there was nothing in the Act to justify excluding the views of the actual lessor, so far as known to the market.

24. Megaw LJ contrasted this case with the position on a compulsory acquisition of a freehold interest, having regard to rule (2):

> In a case which concerns the compensation for the acquisition of a freehold interest in land where there is no leasehold interest there is, as I see it, no problem. No question can arise as to the special characteristics of the particular freehold owner. The compensation which falls to be paid does not vary according to whether the freehold owner would in fact refuse to sell, if he had the choice or whether, if he sold, he would be likely to be a hard bargainer or a soft bargainer, or whether he would insist on conditions which would reduce the value of the land in the hands of a purchaser. Questions whether he is young or old, rich or poor, miserly or spendthrift, are wholly irrelevant×
>
> The ‘willing seller' is a hypothetical character. There is no justification for attaching to him, so as to increase or decrease the assessment of compensation, any special characteristics. He is to be assumed to be willing to sell at the best price which he can reasonably get in the open market" (p 415−6).

He distinguished this from the case before him, where the attitude of someone other than the "willing seller" was in issue:

> The fact that this freehold owner, the G.L.C., is no longer prepared to do that which is necessary to create the "marriage value" may be described as a peculiar characteristic of this particular landlord, but I see nothing in the rules which enables it to be ignored on that account. It is a fact which would indeed have affected the value of the leasehold interest if it had been offered on the open market by the claimants on the relevant date" (p 416)

25. Agreeing, Lawton LJ said:

> The assessment of compensation in cases such as this is a most difficult task calling for the judicial use of fertile imagination×. It is important that this statutory world of make−believe should be kept as near as possible to reality. No assumption of any kind should be made unless provided for by statute or decided cases." (p 420)

Of rule (2) he said:

> × When applying this rule, the Lands Tribunal has to disregard what may well be the reality of a most unwilling seller and, in the absence of evidence on the point, use its imagination to envisage how buyers in an open market would react to what was on offer×" (p 421)

26. Mr Purchas relied on the statement that the willing seller is "a hypothetical character" and that "no question can arise as to the special characteristics of the particular freehold owner". Mr Ash on the other hand relies on Lawton LJ's statement that "the statutory world of

make−believe should be kept as near as possible to reality". He refers also to the statement to similar effect by Peter Gibson LJ in *Hoare (VO) v National Trust* [1998] RA 391, 415, where he applied the approach of Lawton LJ in a rating context, and emphasised "the necessity to adhere to reality subject only to giving full effect to the statutory hypothesis"; he called this " the principle of reality".

27. In my view there is no principle of law at issue here. The need to arrive at an "open market" valuation arises under many statutes, and the general approach is not in doubt. A recent authoritative statement can be found in *Walton v IRC* [1996] STC 68, 83 per Peter Gibson LJ. In that case the statute, relating to capital transfer tax, required the value to be assessed as "the price which the property might reasonably be expected to fetch if sold on the open market×". Peter Gibson LJ said:

> Although the statute says nothing about a willing seller or a willing buyer the concept of the open market automatically implies a willing seller and a willing buyer, each of whom is a hypothetical abstraction. However the willing buyer ‘reflects reality in that he embodies whatever was actually the demand for that property at the relevant time'. *(see IRC v Gray* [1994] STC 360, 372 per Hoffmann LJ). Whilst both the seller and the buyer are assumed to be willing neither is to be taken to be over−eager× The statue assumes a sale. That means× that the vendor, if he is offered the best price reasonably obtainable in the market, cannot be assumed to say that he will not sell because the price is too low as inadequately reflecting some feature of the property nor can the purchaser be assumed to say that he will not buy because the price is too high..." (p 85 - 86).

In substance this is no different to professional definitions of "market value"; see, for example, the RICS' Practice Statement 4, 1/3/00:

> The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's−length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

28. In the present case the Tribunal had to assume a sale of access rights over a railway between a willing seller and a willing buyer. I agree with Mr Ash that it was not required to ignore the fact that, since these were rights of access over a railway, the willing seller would by definition be a railway company. In any event, the only "political pressures" which could be relevant would be pressures to sell at a price less than that which would otherwise be obtained. Outside any special statutory or commercial context, any company (statutory or not) would normally be expected to seek the best price for its assets. It is not clear why a railway company should be any different. Not surprisingly, the Tribunal found that, whatever the pressures, the hypothetical railway company "would be concerned to extract a proper value for the rights that it granted".

29. We were referred to agreed extracts from the evidence of Mr Kirby, the sales director of Railtrack Property, who was involved in the negotiations. He indicated that Railtrack were reluctant to specify a figure in the negotiations, because he thought that "Guinness were

going to use political pressure to achieve their aims", and he referred to the "political heat" which greeted the £9.7m offer. Later, in re−examination, he commented that, Guinness's agents were seeking to use political pressure to get the rights on a non−commercial basis, but he had always made clear that he was "happy to negotiate but only a commercial basis". He explained the £9.7m offer as:

> × not × on a commercial basis. It was an offer made really at that time to try and induce them to work on profit share."

30. Insofar as that evidence shows the possibility of political pressure being used to overcome Railtrack's reluctance to sell, it does not advance the debate, since a willing sale had to be assumed. Further, Mr Kirby made clear that, whatever Guinness's hopes might have been, he was only prepared to negotiate on a "commercial basis". Therefore, the only question was whether the offer of £9.7m was a genuine offer capable of being accepted or, as he implied, simply a tactical ploy. The Tribunal considered that point, and held, contrary to his evidence, that −

> × it represented the amount that Railtrack and LUL, on the basis of professional advice and after months of negotiation, were prepared to settle for". (para 95).

Having reached that finding, there can be no doubt in my view that they were entitled to take that offer into account, as part of their overall evaluation of the evidence.

31. Before leaving this issue, I should mention a point made by Mr Purchas on the interpretation of rule (2). He noted that in rule (2) itself there is a reference to the "willing seller", but not to the "willing buyer". As Mr Purchas rightly says, rule (2) was originally enacted in the Acquisition of Land (Assessment of Compensation) Act 1919, which followed the Report of a Committee under Leslie Scott QC, relating to the Acquisition of Land for Public Purposes (Cd.9229; the background is discussed in Law Commission "Towards a Compulsory Purchase Code (1) Compensation", CP No.165, para 2.5). Mr Purchas contrasts the wording of rule (2) as enacted, with the recommendation of the Scott Committee. They had said:

> We think it desirable that it should be definitely provided that the standard of the value to be paid to the owner is to be the market value as between *a willing seller and a willing buyer* " (para 8, enphasis added)

Mr Purchas submitted that the fact that rule (2) as enacted refers only to the "willing seller" shows that the Scott recommendation was only partially accepted; the particular characteristics of the actual vendor had to be ignored, not those of the actual buyer. In the end, Mr Purchas did not rely strongly on this point in the present case. However, since it may affect other cases, I should comment briefly.

32. In my view, the submission reads too much into the wording of rule (2). The rule requires the assumption of an "open market" sale. As Peter Gibson pointed out in *Walton* (see above), the concept of an open market "automatically implies a willing seller and a willing buyer". The reason for the specific mention of the "willing seller" is apparent from *Horn v*

Sunderland [1941] QB 26, where Scott LJ (as he had then become) explained the background to the 1919 Act:

> The main object of the Act of 1919 was undoubtedly to mitigate the evil of excessive compensation which had grown up out of the theory, evolved by the courts, that because the sale was compulsory the seller must be treated by the assessing tribunal sympathetically as *an unwilling seller selling to a willing buyer* " (emphasis added)

Similarly, later in the same passage, he referred to rule (2) as designed to "check exaggerated prices", by reversing

> the old sympathetic hypothesis of the unwilling seller and the willing buyer which underlay judicial interpretation of the Act of 1845."

Thus, the mention of the "willing seller" was to emphasise the departure from the previous law; the "willing buyer" was already implied. There was no hint in this judgment that Scott LJ himself thought that his recommendation had not been adopted in full.

33. I accept of course that the assumption of "willingness" has different implications for buyer and seller. This was succinctly explained by Lord Romer in the Privy Council (The *"Indian"* case [1939] AC 302, 312), where he said:

> The compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded."

Thus in the present case the Tribunal must disregard any "urgent necessity" for Guinness to buy the land, and any "disinclination" by Railtrack to part with it. Both are assumed to be to be willing to deal at "the best price reasonably obtainable".

34. For the reasons already given, this ground of challenge fails.

The profit/risk issue

35. The parties agreed in making allowances in their valuations for "profit" or "risk" The Tribunal explained the concept as follows (para 266):−

> × Developer's profit represents a return for enterprise, organisation, overheads and risk. In general, the greater the risk attached to a particular development the higher the level of profit required."

36. To see how "profit" or "risk" came into the Tribunal's findings, it is necessary to set out the figures which underlay their award. Their calculation was set out in their Table 9 (para 287):

Table 9

Value of First Central land (with access rights)		£14,800,000
LESS		
Base value	£1,553,000	
Guinness land required for infrastructure	£2,770,000	£4,323,000
Increase in value		£10,477,000
Less: allowance for risk 20%		£2,095,400
		£8,381,600
Share 50%		0.5
		£4,190,800
Add: Increase in value of Coniston House, Caxton Steel & Sun & Transport Works		£775,000
		£4,965,800
Open Market value of Rights	say	£5,000,000

Two figures in that Table are relevant for present purposes: the starting figure of £14.8m for the "Value of First Central Land (with access rights)", and the 20% deduction as "allowance for risk".

37. The figure of £14.8m was a computer−generated figure, produced as I have explained by the neutral expert using the Circle Systems programme. Again, it is helpful to see how it was presented by the Tribunal. Appendix 1 to the Decision was in the form of a "Report", entitled "Circle Systems Development Appraisal - First Central", and consisting of 9 pages of data and calculations. The main elements can be seen sufficiently from the "Appraisal summary", which I have attached as an appendix to this judgment.

38. The relevant output from that table is (surprisingly, at first sight) not the final figure ("Balance"), but the figure for "Site Purchase Cost", £14.807,388, which, as rounded to £14.8m, is the starting−point for the Tribunal's Table 9. The unexpected order, no doubt, was due to the way the programme was set up. It was apparently designed to enable the expected "Net Realisation" (including sales and rental income) to be compared with the "Outlay" (including the costs of acquiring the site and building), in order to arrive at the expected "Balance" or "Profit". However, in this case it has been used the other way round. A "profit" of 20% was assumed (as indicated by the "Performance Measure"); the other elements of the calculation (Net Realisation, Construction Costs etc) were determined by the Tribunal on the evidence; and the programme was used to arrive at the "Site Purchase Cost" which would be consistent with that profit.

39. Before returning to the body of the Decision, three points should be noted about this calculation, and its relation to the Tribunal's reasoning:−

i) The 20% "profit", assumed by the Circle Systems calculation, was distinct from the 20% "allowance for risk" which appeared in the Tribunal's Table 9.

ii) The "balance" figure used in the Circle Systems appraisal (£65.3 rounded) represented 20% of the "total expenditure" figure immediately above it (£326.5m). The "site purchase" figure (£14.8m) was itself part of that total expenditure, and therefore was subject to the same 20% deduction. Furthermore, since (for the purpose of the appraisal) it had to represent the total cost of the land needed for the development, it could be taken as including the cost of the access rights. This was accurately reflected in Table 9, where the Tribunal referred to £14.8m as "Value of First Central Land (with access rights)". Thus, by using this programme, the Tribunal was implicitly assuming a 20% profit on the total costs, including the cost to a potential developer of the access rights.

iii) The methodology used by the Tribunal to arrive at the value of the site with access rights, including the assumed 20% return on total outlay, accorded with that used by Railtrack's valuer (Mr Banks) to arrive at his estimate of "residualised site value" (Decision, para 227). However, as I shall explain, in the residual valuation prepared by the Guinness valuer (Mr Whitfield), different "profit" or "risk" assumptions were made for different elements of the outlay. Part of Mr Purchas' complaint is that the Tribunal did not properly understand the difference between the two methods, and that this led in effect to "double−counting".

40. The Tribunal's conclusions on this aspect were as follows:

> 265. Profit and risk - Mr Banks has deducted a profit of 20% on all costs (including land value) in his valuation of the First Central land. No further deduction has been made when valuing the access rights. Mr Whitfield has deducted 15% profit on the costs of Buildings A and C to J and 20% on Building B (assumed to be a speculative development) in arriving at his residual land value. No profit on the land value has been allowed on the grounds that Guinness would not seek a return on the value or cost of the First Central land. They would take the view that this land has been owned for 60 years and there is no cost to the company in continuing to hold it for a further period, making it available for development on a plot by plot basis. In addition, when calculating the value of the access rights, Mr Whitfield has made a deduction of 33% for risk.
>
> "266 Developer's profit represents a return for enterprise, organisation, overheads and risk. In general, the greater the risk attached to a particular development the higher the level of profit required. Mr Banks has used the conventional 20% profit on costs and land value. Mr Whitfield has allowed mainly 15% on costs, excluding land value due to the particular situation of Guinness.
>
> 267. Having regard to our reservations regarding Park Royal as an office location, we prefer Mr Banks's overall deduction of 20% on costs. We agree with Mr Whitfield that allowance for risk should be made when calculating the value of the access rights. The payment for these rights is part of the cost of development and should attract a

development return or profit. In our judgment this deduction should also be 20%, not the 33% used by Mr Whitfield."

41. To understand the respective submissions before us, it is necessary to distinguish between the "profit" or "risk" allowances on three different elements: (a) construction and other costs (other than site value), (b) site value, (c) access rights. (For this purpose I gratefully acknowledge the assistance derived from the Tables prepared by the parties, in response to my invitation.)

42. Element (a) is not controversial for our purposes. Mr Banks had deducted 20% on all the costs; Mr Whitfield had deducted 15% of the costs of most of the buildings, but 20% in the case of one (Building B) "assumed to be a speculative development". The Tribunal preferred Mr Banks's approach, having regard to their "reservations regarding Park Royal as an office location".

43. As to element (b), the Tribunal noted that Mr Banks' profit allowance of 20% covered land value, whereas, in Mr Whitfield's valuation, no profit on the land value had been allowed. This, in the Tribunal's summary, was because of the special position of Guinness, who would in effect have written off the value of a site that they had owned for 60 years. The Tribunal (as appears from para 267 above) followed Mr Banks in treating land value as part of the overall cost, subject to his allowance of 20%. They did not in terms comment on Mr Whitfield's reference to the special position of Guinness, as a reason for making no allowance on the land element.

44. The third element (c) reflected an aspect of the evidence of Mr Whitfield, which had been strongly attacked by Mr Banks. The Tribunal had earlier recorded the respective views. Having noted that Mr Whitfield differed from Mr Banks in making no allowance for profit on land (para 248), they said:

> 249 Mr Whitfield has made a deduction of 33% for risk. This reflects the inherently volatile nature of the calculations used to arrive at site value. It acknowledges that risk is carried by Guinness, not by Railtrack×. In the market developers will speculate but, wherever possible, they do so by sharing value when realised. Where there has to be a down payment against the possibility of future profit there is substantial risk and a substantial risk allowance is required. In this case there are uncertainties regarding timing and costs and there is sensitivity inherent in the residual method of valuation×" (para 249)

Earlier they had summarised Mr Banks' comment on this element:

> "219×. A profit level of 20% on costs throughout the development would be used with no further allowance for risk. There is no risk associated with obtaining the access rights. Mr Whitfield's adjustment for risk of 33% is without precedent and wrong in principle. Marriage value should take account of investment risks. Planning permission has been granted and it is common ground that there is a prospect of enhancement in value, even though the amount of that enhancement and the costs of development are in dispute.

> Development could take place without incurring technical costs. The residual method of valuation makes allowance for risk and uncertainty. The deduction of a further 33% is arbitrary and unjustified. The site could have been sold to a developer at the valuation date. This would have transferred the risk."

The Tribunal apparently agreed with Mr Whitfield's approach, but made a deduction of 20%, rather than 33% as proposed by him (para 267 above).

45. Further explanation of the Tribunal's reasoning on this aspect is found in their response to a request from Railtrack, made after receipt of the reasoned decision, but before it became "effective". On 2nd April 2002, Railtrack's solicitors wrote to the Tribunal for clarification:

> The point is whether it was the intention of the Tribunal to deduct 20% on cost, excluding the residual land value, pursuant to the first sentence in para 267 (and then a further 20% on the residual land value pursuant to the second and third sentences in that paragraph). Alternatively did the Tribunal intend to deduct 20% on cost and the residual land value pursuant to the first sentence and then the further 20% pursuant to the second and third sentences?"

The Tribunal responded on 5th April as follows:−

> In our residual valuation to find the value of the first central land we have accepted and incorporated Mr Banks' overall deduction of 20% for profit on total cost (including acquisition price). In our calculation of the value of the rights we have accepted Mr Whitfield's evidence that there should be an allowance for risk and have made a deduction of 20% from the increase in value for risk. The first 20% deduction (profit) relates to the value of the land and the second deduction (risk) related to the value of the rights."

46. Mr Purchas puts his complaint in various ways, but in essence his case is that the Tribunal's final deduction of 20% was unjustifiable, or in any event insufficiently justified in the Decision. He relies on a number of points:

i) Although the Tribunal purported to adopt Mr Whitfield's approach, that was not directly comparable, because he had made no deduction for the land value;

ii) They wrongly treated Mr Banks' allowance of 20% on all costs including land value, as comparable with Mr Whitfield's "exclusion of land value" from his general allowance of 15% on costs (para 265). However, the "land value" to which Mr Banks was referring was the *current* cost of the site, *including access rights* ; Mr Whitfield was referring to the *historic* cost of the Guinness land *without the access rights* .

iii) This led them in turn to conclude wrongly that an additional deduction for risk should be made in calculating the value of the access rights, on the grounds that

"payment for these rights is part of the cost of development" (para 267). This ignored the fact that, in the Circle Systems appraisal, their own calculation, unlike that of Mr Whitfield, had already included the access rights as part of the site costs of the development.

iv) The overall result was that they had made percentage deductions for risk greater, in aggregate, than either valuer had supported.

v) If they had not made this deduction the award would have been substantially higher. (There is a dispute as to the difference, but it is common ground, as I understand it, that it would have been at least £1m higher than the £5m awarded).

47. Mr Purchas also sought to gain assistance from the fact that the Tribunal had rejected his clients' case on many other elements in the calculation, thereby, as he said, adopting a "cautious" approach, which made any further allowance for risk inappropriate. I do not accept that point. The rejection of those aspects of his case is equally consistent with their being examples of what the Tribunal described as "lack of restraint and judgment" (see above).

Legal issues

48. Before giving my conclusions on this ground of appeal, I should comment on two legal issues which have been raised.

49. First, I would accept that, if the Court is satisfied that there was "double−counting" as Mr Purchas claims, or if it is left uncertain as to that possibility, it may intervene, even on an appeal limited to issues of law, and may make an appropriate order remitting the matter to the Tribunal to deal with that point.

50. We did not hear detailed argument on the point. However, Mr Purchas relied by analogy on *Aslam -v− South Beds DC* [2001] EWCA Civ 514, which concerned the compensation payable for discontinuance of a slaughterhouse business. The Court had to examine evidence relating to the somewhat esoteric elements of the calculation of the profits of a slaughterhouse business. The Court emphasised that it was not seeking to lay down any new proposition of law, but felt able to intervene in relation to two matters, where the Tribunal had either proceeded on no evidence, or had failed to take account of "the whole of the evidence" on a particular point (see eg para 26).

51. This case is no more than illustration of the point that issues of "law" in this context are not narrowly understood. The Court can correct "all kinds of error of law, including errors which might otherwise be the subject of judicial review proceedings" (*R v IRC ex p Preston* [1985] 1 AC 835, 862 per Lord Templeman; see also De Smith, Woolf and Jowell, Judicial Review 5th Ed para 15−076). Thus, for example, a material breach of the rules of natural justice will be treated as an error of law. Furthermore, judicial review (and therefore an appeal on law) may in appropriate cases be available where the decision is reached "upon an incorrect basis of fact", due to misunderstanding or ignorance (see *R (Alconbury Ltd) v Secretary of State* [2001] 2 WLR 1389, 2001 UKHL 23, para 53, per Lord Slynn). A failure

of reasoning may not in itself establish an error of law, but it may "indicate that the tribunal had never properly considered the matter×and that the proper thought processes have not been gone through" (*Crake v Supplementary Benefits Commission* [1982] 1 All ER 498. 508).

52. Accordingly, without wishing to lay down any definitive tests, I consider that there is in principle sufficient legal foundation for Mr Purchas' submission on this ground of appeal, if made out on the facts.

53. The other point concerns the status of the letter of the Tribunal of 5th April 2002. Although, as I have said, that was written in response to a request from Mr Purchas's clients, he now submits that we should take no account of it, because it did not form part of the Tribunal's formal decision. He says that the powers of the Tribunal to amend or add to an award are limited to those conferred by the Arbitration Act 1996 s 57(3) (applied by the Lands Tribunal Rules r 32(3)); that is, the power to correct a "clerical mistake or error", or to make "an additional award" in relation to a claim "not dealt with in the award". He also relies on the line of authorities, mainly judicial review cases in the housing field, in which the Court has considered how far it should have regard to affidavit evidence supplementing or modifying the reasoning in the letter of decision (see the useful review by Burnton J in *R (Nash) v Chelsea College of Art and Design* [2001] EWHC Admin 538, para 34).

54. With respect to Mr Purchas, this is a hopeless submission, for three reasons:

i) The cases reviewed by Burnton J show (in his words) that "reasons put forward during correspondence in which the parties are seeking to elucidate the decision should be approached more tolerantly".

ii) At the time of the exchange of correspondence, the decision had not been formally issued, and was therefore still technically open to correction or amendment.

iii) The letter in this case was a response to a request for elucidation made by Railtrack themselves. I do not see how they can now disown it; still less (as Mr Purchas seemed to be trying to do) seek to rely on it if it helps their case, but not otherwise.

55. I should add that, since the hearing, I have become aware of the Tribunal's own consideration of this issue in *Shraff Tip Ltd v Highways Agency* [1999] RVR 322. The President held that, under this procedure, there is no final decision until the costs are decided, and that the parties can apply to have the hearing re−opened. That seems correct in principle, although in practice no doubt the Tribunal, having given what was intended to be a fully reasoned decision, would wish to resist any general reopening of the issues at that stage. However, there may be circumstances where clarification is required, or where some material point has been overlooked.

56. Some guidance may be obtained by analogy from the circumstances in which the High Court may reconsider a judgment, before it has been formally drawn up. These were reviewed recently by this court (following the changes made by the CPR) in *Stewart v*

Engel [2001] 1 WLR 2268. Sir Christopher Slade (at p 2274) referred to the judgment of Neuberger J in *Re Blenheim Leisure (Restaurants) Ltd (No 3)* (1999) Times, 9 November, giving "some helpful examples" of cases where the jurisdiction might justifiably be invoked before the order in question was drawn up:

> × a plain mistake on the part of the court; a failure of the parties to draw to the court's attention a fact or point of law that was plainly relevant; or discovery of new facts subsequent to the judgment being given. Another good reason was if the applicant could argue that he was taken by surprise by a particular application from which the court ruled adversely to him and that he did not have a fair opportunity to consider."

Sir Christopher Slade commented:

> It is to be observed that in all these instances, if the court had no power to reconsider its order before it was drawn up, the only remedy open to the party prejudiced would be by way of appeal from the order. Though on such hypothetical facts an appeal would itself have a good chance of success, common sense suggests that in such cases the judge who made the order should himself have the power to vary it before the appeal procedure has to be set in motion, with the likelihood of exposing all parties to far greater expense and delay than an application to the court of first instance."

I see no reason why the practice of the Tribunal, before its decision has become effective, should be any more restrictive than as explained in that passage. The "common sense" of applying to the Tribunal itself to correct such faults, in order to avoid unnecessary delay and expense of an appeal, is equally strong.

Ground 2 - the merits

57. As I have said, there are two aspects to Mr Purchas' attack; the first concerns the "profit" on the land element, the second, the final "risk" allowance. As to the former, taken on its own, he has no real complaint, since the Tribunal adopted his own expert's approach. At most, it may be said that they did not clearly explain their reasons for rejecting the alternative, but Railtrack cannot complain of the result.

58. Mr Whitfield's approach does in any event appear surprising at first sight. It seems odd that, in an assumed arms−length negotiation, Guinness should be treated as generously allowing the current value of their land to be ignored, whatever the historic cost. Further light was thrown on this aspect by what we were shown of the evidence and submissions before the Tribunal. Although Mr Whitfield had indeed justified his approach by reference to the special position of Guinness, he indicated in evidence that this was "a concession on the part of Guinness and a deviation from a normal accepted market approach" (Transcript, Day 21, p 121). It was necessary, on his figures, to avoid arriving at a negative figure for the value of the rights. In Guinness' closing submissions, it was submitted that, if the Tribunal's

findings were to lead to a higher valuation, the concession should be treated as withdrawn. It seems therefore to have been common ground that, on a "normal market approach", Mr Banks was correct.

59. The critical issue, therefore, relates to the final "risk" allowance. The Tribunal's stated reasons are brief:

> We agree with Mr Whitfield that allowance for risk should be made when calculating the value of the access rights. The payment for these rights is part of the cost of development and should attract a development return or profit. In our judgment this deduction should also be 20%, not the 33% used by Mr Whitfield."

The actual figure raises no material issue. The percentage allowance was a matter of judgment, which was probably not susceptible to more detailed explanation, and cannot be said to be unreasonable in law (cf *Scottish Exhibition Centre v Strathclyde Regional Assessor* [1994] RA 209, 214 per Lord Clyde).

60. As to the principle, it is a fair comment that the Tribunal's reasoning on this point is somewhat compressed. Further, the statement that the extra deduction should be made, because the payment for the access rights was "part of the cost of development", might be thought to imply that no deduction had yet been made for the rights as part of that cost. This would appear to overlook the fact that the access rights had been included, as part of "Site Purchase Cost", in the Circle Systems appraisal, and therefore had been subject to the same deduction.

61. However, I think the key lies in the previous sentence, where the Tribunal made clear that they were adopting Mr Whitfield's reasoning. As has been seen, he explained the extra deduction in this way:

> It acknowledges that risk is carried by Guinness, not by Railtrack×. In the market developers will speculate but, wherever possible, they do so by sharing value when realised. Where there has to be a down payment against the possibility of future profit there is substantial risk and a substantial risk allowance is required×" (para 249, see above))

As I understand it, the point is that the "profit" taken into account in the Circle Systems appraisal is the allowance which would be made by *any* prospective developer, needing to acquire the land (with access rights) from a third party. It takes no account of the different positions of Railtrack and Guinness, as vendor and purchaser respectively of those rights. Railtrack is receiving cash; Guinness is making "a down payment against the possibility of future profit", which carries a separate element of risk. The additional 20% reflects that additional risk.

62. This interpretation is, in my view, reflected in the Tribunal's letter of 5th April, where they confirm that this deduction was based on Mr Whitfield's evidence, and said:

> "The first 20% deduction (profit) relates to the value of the land and the second deduction (risk) related to the value of the rights."

More compendiously, the first is developer's "profit", built into the Circle Systems appraisal, and based on the total outlay, including the value of the land; the second is the additional "risk" (as explained by Mr Whitfield) borne exclusively by Guinness as purchaser of the access rights.

63. In conclusion, the second ground of appeal raises a reasonably arguable issue, which justifies the grant of permission to appeal. However, for the reasons given, I think that the Tribunal's conclusion was justified on the material before them, and adequately reasoned. Furthermore, there was no breach of natural justice. It is clear from the summaries made by the Tribunal of the respective positions of the experts (see above), that the critical point was fully discussed at the hearing.

64. Accordingly, I would dismiss the appeal on this ground also.

Conclusion

65. There may be some lessons to be learnt from the progress of this reference and appeal.

66. If, as here, the parties are intending to rely on a complex valuation exercise, based on a computer model, it is of the utmost importance that they should seek to agree a common model. If necessary, the Tribunal should give directions in order to achieve this. At the same time, all concerned should be aware of the inherent imprecision of such an exercise, which cannot be more than a guide to the exercise of professional judgment. In their pre−hearing discussions, the experts should seek as far as possible to narrow the number of variables, and the range of variation. A degree of give−and−take on the less critical elements is essential, so that the evidence and cross−examination can concentrate on the key issues and variables. The pre−planning of the case also needs to take account of the possibility that the Tribunal may need its own computer assistance (as happened here) in evaluating the case.

67. As far as concerns the form of the decision, there is generally no objection to the Tribunal appending a computer−generated table to the decision, provided its purpose and effect are clear from the body of the decision. They are entitled to regard the decision (particularly in an arbitration) as directed principally to the parties, who will be familiar with the content and form of presentation. However, when it comes to an application for permission to appeal, the position changes. Such an application will be considered in the first instance on paper, by a Lord Justice who will have no previous knowledge of the case, and may have no experience of the valuation techniques involved. It is incumbent on those preparing the application, on behalf of the prospective appellant, to ensure that the court is able fully to understand the material relevant to the grounds of appeal. If detailed understanding of the figures is needed, as was the case here, some further explanation, either in a witness statement or in the skeleton argument, may be required. If so, it should be kept as simple and uncontroversial as possible, and the figures used should be clearly traceable to those used in the decision.

68. In conclusion, I would grant permission to appeal on ground 2, but dismiss the appeal on both grounds.

Sir Denis Henry

69. I agree.

Lord Justice Aldous

70. I also agree

Order: Appeals dismissed; permission to appeal on ground two be granted; the appellant's appeals on ground one and two be dismissed; the appellant do pay the respondent's costs of the appeal and of the appellant's application for permission to appeal as reserved, pursuant to the order of the court on the appellants oral application for leave to appeal dated 22nd October 2002, to be assessed on the standard basis if not agreed; appellant's application for permission to appeal is refused.

(Order does not form part of the approved judgment)

Appendix - Extract from "Development Appraisal"

Appraisal Summary		
INCOME		
Sales Income		1,825,000
Annual Rental Income pa	29,387,596	
Net Capital Value		398,402,996
Other Income		12,252,000
Less Purchaser's Costs		−20,734,925
Net Realisation		391,745,071
OUTLAY		
Acquisition		
Site Purchase Cost	14,807,388	
Site Purchase Fees	814,406	
Total Purchase Cost		15,621,795
Construction		
Construction Costs	192,330,925	
Professional Fees	20,358,498	
Total Construction		212,689,424
Marketing/Letting		

Marketing		900,000
Letting Agent/Legal		5,877,519
Disposal		
Sales Costs		4,743,663
Miscellaneous		
Additional Costs	72,785,407	
	72,785,407	
Finance		
Project Length	117 months	
Debit Rate 7.250% Credit Rate 7.250% (Effective)		
Site Finance	15,667,017	
Construction Finance	−1,830,604	
Total Finance		13,836,413
Total Expenditure		
326,454,221		
Balance		65,290,850
Performance Measures		
Profit on Cost%	20.00%	
×.		

[2004] EWLands ACQ_40_2002 (28 September 2004)

ACQ/40/2002

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – acquisition of land adjoining highway for improvement of junction and to provide access to housing land – proposed link road to proposed bypass – scheme underlying the acquisition – no scheme world – alternative access points – ransom value – whether value existed independently of the scheme – compensation £1,139,000 – Land Compensation Act 1961, s 5(2) & (3)

IN THE MATTER of a NOTICE OF REFERENCE

BETWEEN PERSIMMON HOMES (WALES) LIMITED Claimants

and

RHONDDA CYNON TAFF
Acquiring
COUNTY BOROUGH COUNCIL
Authority

Re:
Land adjoining A473 Llantrisant Road,
Church Village, Llantwit Fardre,
South Wales

Before: P H Clarke FRICS

Sitting at 48/49 Chancery Lane, London WC2
on 19, 20, 22, 23, 26-30 April and 6, 7, 10-12 May 2004
with closing submissions in writing on 25 May, 28 June and 13 July 2004

The following cases are referred to in this decision:

Stokes v Cambridge Corporation (1961) 13 P & CR 77
Batchelor v Kent County Council [1992] 1 EGLR 217; (1990) 59 P & CR 357
Bolton Metropolitan Borough Council v Tudor Properties Limited [2000] RVR 292
Waters v Welsh Development Agency [2004] 1 WLR 1304, HL; [2003] 4 All ER 384, CA; [2001] RVR 93, LT

Wilson v Liverpool Corporation [1971] 1 WLR 302
Pointe Gourde Quarrying and Transport Co Limited v Sub-Intendent of Crown Lands [1947] AC 565
South Eastern Railway v London County Council [1915] 2 Ch 252
Fraser v City of Fraserville [1917] AC 187
Vyricherla Narayana Gajapatiraju v Revenue Divisional Officer, Vizagapatam [1939] AC 302
Margate Corporation v Devotwill Investments Limited [1970] 3 All ER 864
East End Dwellings Co Limited v Finsbury Borough Council [1952] AC 109
Wards Construction (Medway) Limited v Barclays Bank Plc [1994] 2 EGLR 32
Myers v Milton Keynes Development Corporation [1974] 1 WLR 696
Ozanne v Hertfordshire County Council [1991] 1 WLR 105
Cedar Rapids Manufacturing and Power Co v Lacoste [1914] AC 569
Blandrent Investment Developments Limited v British Gas Corporation [1979] 252 EG 267
Lady Fox's Executors v Commissioners of Inland Revenue [1994] 2 EGLR 185
Ryde International Plc v London Regional Transport [2004] RVR 61
Corton Caravans and Chalets Limited v Anglian Water Services Limited [2003] RVR 323
Secretary of State for the Environment, Transport and the Regions v Baylis (Gloucester) Limited (2000) 80 P & CR 324
R v Northamptonshire County Council ex p Commission for New Towns [1991] NPC 109
Marshall v Blackpool Corporation [1935] AC 16
R v Warwickshire County Council ex p Powergen Plc (1997) 3 PLR 62
Tottenham Urban District Council v Rowley [1912] 2 Ch 633

Nicholas Nardecchia instructed by Morgan Cole, solicitors, for the claimants.
Matthew Horton QC and *Jenny Wigley* instructed by Solicitor, Rhondda Cynon Taff County Borough Council for the acquiring authority.

DECISION OF THE LANDS TRIBUNAL

1. This is a reference to determine the compensation payable for the compulsory acquisition of land formerly close to a road junction at Church Village, Llantwit Fardre in South Wales. The claimants seek a substantial sum in compensation on the grounds that the land was required for access to adjoining housing land (the Dyffryn Dowlais site) and therefore had a ransom or key value. The acquiring authority say that, disregarding the scheme and having regard to alternative access points, the land had only a nominal value.

2. Nicholas Nardecchia of counsel appeared for the claimants and called (i) Lyn Powell BSc Dip TP MRTPI FRSA, Planning Director with RPS Planning, Transport and Environment of Cardiff; (ii) Graham Good MSc MA FICE CEng FIHT, a consultant to Ove Arup and Partners, Consulting Engineers of Cardiff and elsewhere; (iii) Andrew Crompton, Land Director of the claimants; and (iv) David Steven Gibbon FRICS, an Associate Partner in GVA Grimley of Cardiff and elsewhere.

3. Matthew Horton QC and Jenny Wigley appeared for the acquiring authority and called: (i) John Garfield Penaluna, in the technical department of Barratt South Wales; (ii) Ron Milsom, formerly a principal engineer in the acquiring authority and now a highway consultant of Cardiff; (iii) Derek Woodward, Regional Land and Property Director of Taylor Woodrow and formerly Land Manager of Barratt South Wales; (iv) Richard Hird BSc CEng MICE,

Director of Quadrant Consulting Limited of Cardiff; (v) Philip Edward Ratcliffe BA MRTPI, a Senior Planning Officer of the acquiring authority (formerly with the predecessor authorities, Mid Glamorgan County Council and Taff Ely Borough Council); and (vi) Gareth Owain Llywelyn LLB BSc FRICS ACIArb IRRV, Director of Professional Services, Lambert Smith Hampton, of Cardiff and elsewhere.

4. I have made an unaccompanied inspection of the reference land, the Dyffryn Dowlais site and the surrounding area.

FACTS

5. The parties have agreed several statements of agreed facts and from these statements and the evidence I find the following facts.

Compulsory acquisition of reference land

6. On 9 May 1990 Keltecs (Consulting Architects and Engineers) Limited, acting for potential developers of the Dyffryn Dowlais site, wrote to Mid Glamorgan County Council requesting the authority to acquire the land shown on the accompanying plan (later the reference land) to allow road widening relevant to the traffic light controlled junction to be carried out by the developers of the adjoining Dyffryn Dowlais site.

7. On 26 July 1990 the Highways and Transportation Committee of Mid Glamorgan County Council, on the recommendation of the County Engineer and Surveyor, resolved to make a compulsory purchase order in respect of the land referred to in the preceding paragraph. Subsequently it was agreed between the County Council and the applicants that more land was required for the necessary road widening and provision of footway, verge and embankment.

8. On 30 April 1992 the Highways and Transportation Committee of Mid Glamorgan County Council resolved to adopt the recommendation of the County Engineer and Surveyor that a compulsory purchase order be made in respect of an enlarged area of land.

9. On 11 May 1992 the County Council made The Mid Glamorgan County Council (Widening of Route A473 Waterton Cross to Treforest Principal Road at Llantwit Fardre (Compulsory Purchase Order) 1992 under sections 239, 240 and 249 of the Highways Act 1980 and the Acquisition of Land Act 1981. The order was confirmed by the Secretary of State for Wales on 8 March 1993. This order authorised the acquisition of two plots of land described as:-

> "1. …95 square metres of land forming highway verge abutting and on the south of Route A473 at its junction with the access road to the Nipa Laboratories, Llantwit Fardre.
>
> 2. 175 square metres. Waste ground abutting and on the north-east of the access road to the Nipa Laboratories, Llantwit Fardre."

These two plots are contiguous and together have an L-shape. The total area is 270 sq m. These plots are referred to as "the reference land" in this decision.

10. On 1 March 1996 the County Council made a general vesting declaration in respect of the reference land which vested in the Council on 27 April 1996. This is the agreed date of valuation. Possession of the land was taken on 15 January 1999. The claimants referred the determination of compensation to this Tribunal on 26 February 2002.

11. By an agreement dated 7 March 1996 between David Howard Jenkins and Gwyn Gower Jenkins (owners of part of the Dyffryn Dowlais site) and Mid Glamorgan County Council, the owners agreed to indemnify the County Council in respect of all costs and expenses incurred in connection with the compulsory acquisition of the reference land, to include the purchase of plot 2 and to include fees incurred in negotiations or referred to the Lands Tribunal.

12. By a unilateral planning undertaking dated 31 October 1997 under section 106 of the Town and Country Planning Act 1990 Barratt Homes Limited agreed to reimburse the cost of acquiring the reference land and to pay all fees incurred by the Council in the acquisition.

13. The acquiring authority, Rhondda Cynon Taff County Borough Council ("the Council"), are the successors to Mid Glamorgan County Council (from 1 April 1996)

Reference land and surrounding area

14. The reference land is in the area known as Church Village, Llantwit Fardre, in South Wales, approximately 10 miles north west of Cardiff and three miles south of Pontypridd. The A473 Llantrisant Road runs in a north easterly direction, close to Beddau and Llantwit Fardre in the south west and then through Church Village and on towards Treforest and Pontypridd. The essential geography for the purposes of this reference is best described by reference to this road.

15. On the outskirts of Church Village, proceeding towards the centre of the village from the south west, the A473 passes laboratories, formerly Nipa now Clariant, on the south eastern side of the road. At the end of this property is an access road; the reference land was immediately to the north east of this access; it now forms part of the widened and improved A473. Along the road, travelling a short distance north east, is now a cross roads, known as the Pen Yr Eglwys junction. At the date of valuation it was a priority T-junction, the A473 being joined on its north western side by a distributor road, Pen Yr Eglwys, which passes through a residential area, comprising Meadow Farm Estate, the rear of the former East Glamorgan Hospital and two residential sites, known as The Link and Ty Draw Farm, to join St Illtyd Road at Upper Church Village. The Pen Yr Eglwys junction is now a traffic light controlled crossroads, with a new road on the south east, Coed Dowlais, leading to a housing estate on the adjoining Dyffryn Dowlais site.

16. At the date of valuation the Dyffryn Dowlais site was agricultural land and woodland with a house and buildings situated approximately in the centre with access from a track

joining the A473 on the western edge of Church Village. The site is now a partly developed residential estate with access from the Pen Yr Eglwys junction (Coed Dowlais) and a proposed access (under construction) from Station Road. The Dyffryn Dowlais site is bounded on the north by the line of a disused railway line running at the rear of houses fronting the A473 in Church Village, on the west by the disused line and woodland fronting the A473 and on the east it has a short frontage to Station Road to the south of the cross roads in Church Village. The south western corner of the site adjoined the reference land and the Nipa premises.

17. To the north east of the Pen Yr Eglwys junction the A473 has a line of houses on the north western side, the last house being The Croft, situated a short distance to the south west of the entrance to the former East Glamorgan Hospital, which is on the opposite side of the A473 to the Dyffryn Dowlais site. The former Hospital site is now being developed for housing as St David's Manor. The former entrance to the Hospital will be referred to in this decision as "the Hospital entrance. " On the opposite side of the A473, at this point, between the road and the Dyffryn Dowlais site, is the line of the disused railway and a belt of woodland. The A473 then turns east to the centre of Church Village where it passes through a traffic signal controlled cross roads, with St Illtyd Road to the north, which leads to Upper Church Village, and Station Road, which runs south east. The A473 then leads to Tonteg and Treforest.

Ownerships

18. At the date of valuation the freehold interest in the reference land was held by Ideal Homes (Wales) Limited. The claimants are successors in title to Ideal Homes.

19. Under an option agreement dated 18 March 1996 between Margaret Glyn James and David Evan Naughton Davies (the first grantors), David Howard Jenkins and Gwyn Gower Jenkins (second grantors), Margaret Glyn James and William Edward James (third grantors), Barratt Homes Limited (purchaser) and Barratt Developments PLC (surety), Barratt Homes were granted an option to purchase the whole or part or parts of the Dyffryn Dowlais site at a price or prices to be agreed or determined by arbitration. The option fee was £500. The purchase price was to take into account infrastructure costs which included the cost of acquiring any land outside the Dyffryn Dowlais site necessary to implement any planning permission granted in respect of that site.

Local Plans

20. In the Llantrisant Interim Local Plan Draft Proposals 1976, the Dyffryn Dowlais site was included in a schedule of residential sites (R13 and 14), where "development is intended to proceed from the A473 protecting the existing woodlands and proposed Public Open Space towards the proposed roundabout south of Station Road."

21. The Plan proposed a new and realigned A473 in the long term. In the short term certain lengths of the proposed road should be constructed to bypass Church Village, Llantwit Fardre, Llantrisant and Talbot Green, to be linked to the existing A473 by local distributor roads which would be needed as part of proposed development. The Proposals Map showed a local distributor road (annotated as "New access road provided by the Site Developers") connecting

the existing A473 at the Hospital entrance to the proposed bypass to the south east of Church Village. The proposed distributor road then ran west and north west at the side of the Hospital to housing development at Meadow Farm and The Link.

22. In the Llantrisant Local Plan Updated Draft Proposals, April 1983, the Dyffryn Dowlais site was allocated for housing (h2(f)).

23. Under Proposal t3(a) land was safeguarded for "a bypass to Church Village from Cross Inn to Tonteg" on an alignment south of Llantwit Fardre, Church Village and Tonteg. A junction with the local road network was proposed at Station Road. It was not anticipated that finance will become available for the construction of the bypass during the plan period, i.e. before 1991 (paras 4.15 and 4.18).

24. Under Proposal t5(a) and (b) a local distributor road shall be constructed through the housing sites to the north west of the A473 (Meadow Farm, Ty Draw Farm and to the west of the Hospital) to connect to the A473 and then through the Dyffryn Dowlais site "to allow a new link to be provided from the A473 to the proposed Church Village Bypass." Para 4.22 stated that a single access from the A473 should be provided to serve the Dyffryn Dowlais site and the adjoining industrial site (e3), Nipa. This access road will need to be of a standard to enable it to be extended to eventually serve as a link from the A473 to the Church Village Bypass. In relation to the development of Meadow Farm, para 4.23 of the Plan stated that planning permission has already been granted with an access point to the A473 further west and now indicated on the Proposals Map and that agreement will be necessary with the developer for its relocation to enable a common junction to be achieved with the proposed link road to the Church Village Bypass. The access point on the Proposal Map was the present Pen Yr Eglwys junction. The Proposals Map did not show the local distributor road (t5b) linking to the proposed Church Village Bypass.

25. Under Implementation it is stated that the County Council will wish to ensure an appropriate hierarchy of roads when considering planning briefs or planning applications. If this required a level of provision over and above that required to be provided by a developer, then the County Council will identify this as a highway improvement and will be responsible for the additional works and costs (para 4.23). Final draft proposal to the same effect were published in November 1983.

26. In the Llantrisant Local Plan Proposals of December 1984, the Dyffryn Dowlais site was allocated for residential development for 450 dwellings (Proposal h2.6).

27. Proposal t3(a) provided for land to be safeguarded for the Church Village Bypass and t5(a) and (b) provided for a local distributor road as set out in the 1983 Plan. There was a similar provision for implementation as in the 1983 Plan (para 5.23).

28. This Plan was placed on deposit, objections were heard at a public inquiry in 1986. These included an objection to the housing allocation for the Dyffryn Dowlais site, which was rejected by the inspector in his report dated 18 July 1986.

29. In the Llantrisant Local Plan Final Proposals, November 1987, Proposals and Policies h2.6, t3(a) and t5(a) and (b) remained unaltered from the previous Plan. The Proposals Map did not show the local distributor road (t5b) linking to the proposed bypass. The implementation provision followed that in the previous plan (para 5.23).

30. On 3 February 1992 the Llantrisant Local Plan Draft was approved, incorporating draft modifications to the Final Proposals of November 1987, for development control purposes pending publication of a Draft Taff Ely Local Plan. Proposals or Policies h2.6, t3(a) and t5(a) and (b) remained unaltered. This was the Local Plan at the date of the making of the compulsory purchase order.

31. In the Taff Ely Local Plan 1992 – 2006, Consultation Draft 1993, the Dyffryn Dowlais site was allocated for residential development in the period 1992 – 2006 (Policy H1.25) for 450 units. Policy h7.5 required housing development "to have satisfactory access and parking provisions."

32. Policy t1.2 provided for the A473 Church Village Bypass to be safeguarded from other development and Policy t4.4 stated the Dyffryn Dowlais link road was to be provided as part of a new development scheme. As this road is required for a development scheme developers will be expected to finance the construction (para 8.28). A single access from the A473 is required to serve the Dyffryn Dowlais site and this access road will need to be of a standard to enable it to be extended to serve as a link from the A473 to the proposed Church Village Bypass (para 8.32). The Proposals Map showed the link road joining the A473 at the Pen Yr Eglwys junction and extending towards, but not joining, the Church Village Bypass.

33. The Local Plan at the valuation date was the Taff Ely Local Plan Deposit Draft 1995. The policies in the Consultation Draft of 1993 were unaltered, Policies h1.25, t1.2 and t3.3 (formerly t4.4), and the justification was unaltered (now paras 8.19, 8.27 and 8.30). The Dyffryn Dowlais link road joined the A473 at Pen Yr Eglwys junction and was to be financed by the developers as part of a new development scheme.

34. None of the above Local Plans were adopted at or before the valuation date.

Dyffryn Dowlais site: planning

35. As stated above, the Dyffryn Dowlais site was allocated for residential development in all Local Plans from 1976.

36. The planning applications referred to below all relate to mainly residential development on the Dyffryn Dowlais site with highway access from a site road with a junction to the A473 at Pen Yr Eglwys and another junction with Station Road.

37. In the Dyffryn Dowlais Planning Study: Observations prepared by Mid Glamorgan County Council in August 1985 it is stated that the "developer will be required to provide a roundabout junction on the A473" (para 1.2).

38. On 19 May 1986 application was made for outline planning permission for residential development, public house and garden centre (56/86/0510). This was refused on 17 November 1986 on the grounds that the proposed development was premature until improvements to the A473 have been carried out and the creation of traffic hazards.

39. On 8 May 1987 application was made for outline planning permission for residential development (56/87/0474). This was refused on 28 September 1987 on the ground that the proposed development was premature until improvements to the A473 have been carried out. An appeal was lodged on 28 September 1987 but held in abeyance pending a further application.

40. On 11 July 1989 an outline planning application was made for residential development, public open space and public house site (56/89/0694). On 23 October 1989 it was resolved by the local planning authority that conditional planning permission be granted subject to the applicants entering into a section 52 agreement in respect of public open space, the phasing of the development and to ensure that no works traffic entered or left the site from Station Road. On 17 September 1990 it was agreed that the agreement be confined to phasing and open space. This section 52 agreement was not completed and no planning permission was granted.

41. On 12 March 1996 application was made for outline planning permission for residential and ancillary use development (56/96/2007). This application was subsequently withdrawn.

42. On 30 January 1997 an outline planning application was made for residential and ancillary development (56/97/2062). This application was not determined within the prescribed period and the applicants, Barratt South Wales, appealed against this non-determination on 12 May 1997. On 25 September 1997 the Planning Committee resolved that the Welsh Officer be informed that if the Committee had determined the application it would have refused planning permission on highway grounds.

43. On 31 October 1997 Barratt Homes Limited entered into a unilateral deed of planning obligation under section 106 of the Town and Country Planning Act 1990 for the purposes of their appeal. It is noted in the recitals that the reference land "is required to construct the proposed access to" the Dyffryn Dowlais site "and has been compulsorily purchased by the Council for that purpose." Barratt agreed to submit a detailed scheme for the improvement, widening and re-alignment of the A473 to accommodate a suitable signal controlled junction access, to include a multi-lane layout to provide for left and right turning traffic to the Dyffryn Dowlais site. The works to be capable of accommodating the traffic generated by their development. No house building shall commence until these A473 improvement works have been completed to the satisfaction of the Council. Barratt will enter into an agreement under section 278 of the Highways Act 1980 to carry out these works. The deed was made on the understanding that the Council will grant Barratt the right to construct the roads permitted by the planning permission under appeal over the reference land and the A473 at, and adjoining,

the Pen Yr Eglwys junction. Rights of way were to be granted by the Council from the Dyffryn Dowlais site to the A473. Barratt agreed to dedicate for highway purposes, without consideration, such land as is necessary to construct the Church Village Link Road and the Church Village Bypass as shown on the plan annexed to the deed. This land included an access road from the A473 to the Dyffryn Dowlais site at the Pen Yr Eglwys junction. Barratt also agreed to reimburse the Council for the cost of acquiring the reference land and to pay all fees incurred by the Council in the acquisition.

44. On 4 December 1997 an inspector allowed Barratt's appeal in respect of application 56/97/2062 and granted outline planning permission for residential and ancillary development on the Dyffryn Dowlais site. Not more that 450 dwellings were permitted on a maximum area of 15 hectares. No development could commence until details of the proposed junctions onto the A473 and Station Road had been approved by the Council.

45. Approval of reserved matters under this outline planning permission was given on 10 September 1998. Subsequently, on 10 October 2003 conditional planning permission was granted for a neighbourhood centre comprising doctor's surgery, pharmacy, optician, dental surgery and class A1 retail shop with surgery/offices over on the site allocated for a public house (application 02/1958).

46. On 15 January 1999 the Council made the Rhondda Cynon Taff County Borough Council (No.33) Tree Preservation Order 1999 relating to trees on the Dryffryn Dowlais site.

Pen Yr Eglwys junction

47. The original Pen Yr Eglwys junction was constructed as a priority T-junction in about 1984 when the Meadow Farm Estate was built.

48. On 31 October 1997 Barratt Homes Limited entered into a unilateral deed of planning obligation under which they agreed to submit a detailed scheme for the improvement of the A473 and to enter into a section 278 agreement to carry out these works.

49. On 10 September 1998 the Council granted planning permission for development comprising the construction of a new road junction on the A473, drainage and part of a spine road at Dyffryn Dowlais.

50. Following compulsory acquisition the Council took possession of the reference land on 15 January 1999.

51. On 28 January 1999 the Council and Barratt Homes Limited entered into an agreement under section 111 of the Local Government Act 1972 and sections 1 and 278 of the Highways Act 1980 whereby the Council granted consent to enter upon the public highway and Barratt agreed to carry out approved works at the Pen Yr Eglwys junction, including part of the access road to the Dyffryn Dowlais site and works at the junction and access to Nipa Laboratories.

52. After 1999 the works for widening the A473 and constructing the new traffic signal control junction with footway, verge and embankment were carried out and the development of the Dyffryn Dowlais site proceeded.

53. On 7 June 2001 the Council wrote to Barratt stating that the widened section of the A473 at the Pen Yr Eglwys junction and the unnamed spine road at Dyffryn Dowlais became adopted and maintained at public expense under section 228 of the Highways Act 1980 on 18 April 2001.

Meadow Farm Estate

54. Planning permission for housing development on the Meadow Farm Estate was granted in 1973, with a junction to the A473 located approximately 50 metres south west of the present junction at Pen Yr Eglwys. Subsequently it was agreed that the junction should be relocated to its present position and this was constructed in about 1984 when the Meadow Farm Estate was developed.

Highway improvement near Hospital entrance

55. In 1964 Glamorgan County Council made The County of Glamorgan (Improvement of Pontypridd – Llantrisant Road Route 473 at Nant Ty Crwyn, Church Village) Compulsory Purchase Order 1964. It was confirmed on 24 March 1965 and provided for the purchase of land for the widening of the A473 close to the Hospital entrance. The land to be acquired was 2,700 sq yds of woodland owned by Henry Elias Jenkins on, and adjacent to, the south side of the road.

56. By a deed of exchange dated 29 March 1968 Mr Jenkins conveyed this woodland to the County Council "to the intent that the same may henceforth be dedicated to and form part of the ancient highway repairable at the public expense." The County Council conveyed to Mr Jenkins a plot of land of about 1,260 sq yds on the south side of the road and agreed to pay £50 by way of equality of exchange.

57. After March 1968 but not later than 1974 the County Council carried out works of improvement to the A473 on part of the woodland conveyed by Mr Jenkins. These works comprised the widening of the carriageway and the provision of a paved footway on the south eastern side in respect of the length of highway opposite OS field 755a. Shortly after carrying out these works the County Council erected a wooden fence with a cross rail on an alignment slightly to the south east of the new footway. At the foot of the slope is a line of concrete posts which were not erected by Mr Jenkins or his successors in title. There are a number of drains at or close to the foot of the slope.

Church Village Bypass and link road

58. Neither the Church Village Bypass nor the link or distributor road to join it to the A473 at Pen Yr Eglwys junction via part of the Dyffryn Dowlais access or spine road have yet been built.

Valuation

59. The agreed valuation date is 27 April 1996.

60. The parties agree that the existing use value or amenity value of the reference land at the date of valuation was £500 and the industrial value was £5,300.

61. It is agreed that, if it is necessary to access the ransom or key value of the reference land, this requires the development value of the Dyffryn Dowlais site to be assessed. For the purposes of this valuation it is agreed that:-

(i) the total net developable area of the Dyffryn Dowlais site is 34.65 acres comprising 32.92 acres for residential development and 1.73 acres for the public house site;

(ii) a quantum allowance of 11.25% should be made;

(iii) a deduction of £3,442,000 for abnormal costs should be made;

(iv) the existing use value of the Dyffryn Dowlais site was £275,000.

ISSUES

62. The parties have agreed that the reference land had a nominal value of £500 for amenity purposes at the valuation date. The claimants contend that the land had a much higher value – a ransom or key value of £1,550,000 because it held the key to the development of the Dyffryn Dowlais site. They say that the land was essential to the improvement of the Pen Yr Eglwys junction to enable access to the Dyffryn Dowlais land, the only point on the A473 where access would be permitted. Ransom value would be paid by the owners or developers of the Dyffryn Dowlais site to enable improvement of the junction and the grant of planning permission for residential development on the adjoining Dyffryn Dowlais land. This additional value existed prior to, and independently of, the scheme underlying the acquisition. The value of the reference land was not enhanced by the scheme. The scheme is narrow comprising only the improvement of the junction, excluding any part of the proposed link road to the Church Village Bypass or alternatively only the first part of the link road which forms the access to the Dyffryn Dowlais site. The additional value does not fall to be excluded under rule (3) of section 5 of the Land Compensation Act 1961.

63. The Council contend that the agreed amenity value of £500 is also the market value that is payable on compulsory purchase. The scheme underlying the acquisition is wider than that proposed by the claimants and is related to Local Plan proposals for the Church Village Bypass and link road joining the A473 at the Pen Yr Eglwys junction. The scheme comprises the improvement of the junction and the first stage of the link road as shown on Local Plans. In

the no scheme world the reference land did not possess a ransom value. Any additional value above amenity value was created by the scheme underlying the acquisition and is to be disregarded. Furthermore, the Pen Yr Eglwys junction was not the sole point of access to the Dyffryn Dowlais site. Highway works at the Pen Yr Eglwys junction could only be carried out under statutory powers and therefore rule (3) of section 5 of the 1961 Act precluded any additional value. Even if the reference land had a ransom value it was not more than £122,804.

64. From this summary of the parties' contentions the following questions emerge. First, what is the scheme underlying the acquisition of the reference land? Second, what are the characteristics of the no scheme world? Third, does rule (3) of section 5 of the Land Compensation Act 1961 apply? Fourth, having regard to the answers to these questions, what was the market value of the reference land at the valuation date under rule (2) of section 5 of the 1961 Act.

PROCEDURAL DECISIONS

65. I record four procedural decisions made during or after the hearing. Mr Nardecchia expressed concern that the Council wished to call Mr Ratcliffe as an expert witness. His written evidence is headed Witness Statement and contains evidence of fact save for two paragraphs. It does not include the usual declaration given by an expert witness. I agree that Mr Ratcliffe appears to be a witness of fact from his written evidence. However, my directions dated 31 May 2002 allowed each party to call three expert witnesses, for valuation, planning and highways respectively, and the Council did not exceed this limit. Without Mr Ratcliffe they would not have a planning expert. Mr Ratcliffe has the qualifications and experience to be an expert planning witness. I allowed Mr Ratcliffe to give evidence as an expert witness. There was no prejudice to the claimants. His written evidence was served on the claimants before the hearing.

66. At the start of day 8 of the hearing, Mr Horton sought leave to call additional evidence regarding the cost of the spine road which forms part of the Dyffryn Dowlais residential development. Mr Nardecchia opposed the application. I refused leave for two main reasons. First, the parties have agreed a figure of £3,442,000 for several abnormal costs incurred in the development of the Dyffryn Dowlais site. This figure appears to have been agreed about a year before the hearing. Both valuers used this figure in their valuations. It includes the cost of a spine road. In my judgment, it would be wrong to allow the Council to re-sile from one item in this agreement, which I have no doubt was a package deal, a global figure with give and take on both sides. No adequate reason was given by Mr Horton as to why this agreement should be reopened. Second, if I had allowed this additional evidence I would have had to give the claimants the opportunity to call a further witness on this matter, with an inevitable adjournment of the hearing and additional cost.

67. On day 12 of the hearing, during cross examination of Mr Ratcliffe, Mr Nardecchia sought to put in evidence an e-mail dated 29 April 2004 from the Land Charges Officer of the Council to the claimants' solicitors giving details of a planning permission granted for a neighbourhood centre on the public house site on the Dyffryn Dowlais land. Mr Horton objected on the ground that this evidence is not of value, being seven and a half years after the valuation date. I admitted the evidence. It is relevant to the valuation of the public house site

(which Mr Gibbon valued as suitable for a neighbourhood centre); Mr Ratcliffe was given an opportunity to comment on it; the information in the e-mail was known to the Council and should have been included in the statement of agreed facts; and the fact that it relates to a planning permission granted some seven and half years after the valuation date should go to weight and not to admissibility.

68. Finally, I refused leave to admit affidavit evidence lodged by the Council after the close of the hearing on 12 May 2004. On 21 May the Council sought leave to lodge an affidavit by Mr David Howard Jenkins regarding the road works carried out in 1968 to the A473 at the entrance to the Hospital, and an affidavit by Mr Michael James Burt regarding the meaning of a letter dated 1 February 1996 which he wrote as an officer of Mid Glamorgan County Council and as to the question of a ransom strip opposite the Hospital entrance. The claimants objected to the admission of this evidence and by an order dated 28 May I refused leave. No reason was given by the Council as to why this evidence should be admitted after the close of the hearing and as to why it could not have been given at the hearing. The matters covered by the affidavits were known to be in issue, although they are peripheral to the main issues. The dates for the hearing held in April and May 2004 were notified to the parties in December 2003 and the date for lodging witness statements was 14 May 2003, just under a year before the hearing. The Council had ample opportunity to prepare their case and to lodge their witness statements before the hearing. If I had allowed this additional evidence it would have been necessary to allow the claimants to produce evidence in rebuttal, perhaps to reopen the hearing, with consequent delay and additional costs. In my judgment there was no justification for the late admission of this evidence.

EVIDENCE OF FACT

69. **Mr Penaluna** said that he was involved in the provision of access to the Dyffryn Dowlais site. He became aware that the local authority required a junction oppose Meadow Farm to comply with the Local Plan and with the intention to create a bypass. He considered this access in 1997. The estimated cost of £410,320 was unnecessarily expensive. There was a less expensive access opposite the Hospital entrance with an estimated cost of £279,780 with £30,000 extra for the land. He was, however, instructed by the Managing Director of Barratt that they were not interested in a serious attempt to persuade the local authority to use another access. He was told that the local authority would not consider this access because it did not comply with their bypass proposals. Mr Penaluna was told by Barratt's architect that the local authority preferred the Pen Yr Eglwys access due to their consideration of a bypass.

70. There were mine shafts and adits on the Dyffryn Dowlais site. Works to the shafts and adits were carried out at a cost of about £37,000. There were tree preservation orders on the line of both routes but no difficulties were experienced.

71. Access to the Dyffryn Dowlais site opposite The Croft was the subject of a rebuffed inquiry and not pursued.

72. **Mr Milsom** said that as a principal engineer for the Council his initial involvement with the Dyffryn Dowlais site was dealing with a planning application in 1989. It was his

understanding that the Council wished to have the Dyffryn Dowlais access at the Meadow Farm junction to best serve the Church Village Bypass. In April 1989 it was proposed to have a roundabout junction with a through route to Station Road.

73. He referred to the steps taken towards a compulsory purchase order and the proposed section 106 agreement. On 19 October 1993 solicitors wrote to the Council confirming that their clients would meet the cost of buying the reference land. Mr Milsom understood that the Council needed to acquire the land and now had someone to pay for it. He referred to subsequent correspondence and memoranda. In November 1994 a proposal by Barratt for access opposite The Croft was most unlikely to have been unacceptable. On 12 December 1994 the Highway Liaison Officer to the Council stated that, although the Council were willing to consider alternative layouts, Barratt had made no attempt to integrate the new development with the Council's proposals for the Church Village Bypass and link roads. The Council were determined that the Dyffryn Dowlais access should be opposite Meadow Farm. On 20 January 1995 a memorandum from Mr Burt stated that the compulsory purchase order was to facilitate highway improvements for access to Meadow Farm and for a link to the bypass.

74. On 2 October 1995 Mr Milsom wrote to Barratt that the preferred access to the Dyffryn Dowlais site coincided with the proposed link to the Church Village Bypass. If another access existed then it would be considered but he could not see how it could be placed to benefit the bypass in the same way. Mr Milsom anticipated that, if Barratt had proposed a different access, it would have been refused. He would have expected an appeal to be dismissed because a different access would not have met the interests of the Local Plan.

75. On 27 February 1996 Mr Burt wrote to Herbert R Thomas confirming that, had it not been that comprehensive development dictated a particular form of highway layout, an appropriate access along the A473 would have been considered on its merits. It was his opinion that a ransom situation did not exist because the access opposite Meadow Farm was the preferred option in accordance with the Local Plan.

76. Mr Milsom referred to the progress of the planning application for the Dyffryn Dowlais site, for which outline planning permission was granted on appeal in December 1997.

77. It was the Council's policy to keep to a minimum the number of access points from adjoining land onto the A473. Minor works to this road and other roads would not be included in a Local Plan. Before May 1990 the County Council expected the Dyffryn Dowlais developers to provide the bypass link road and the A473 junction. The Council did not wish to have the link road built but leading nowhere: access was to be built to lead into the Dyffryn Dowlais site with potential for a link to the bypass.

78. **Mr Woodward** said that, when he was Land Manager with Barratt South Wales, he was responsible for overseeing negotiations regarding the option to purchase the Dyffryn Dowlais site.

79. It was apparent that the local authority required access to this land to be at a point to enable an access link to the bypass to be built. There was no reason to argue about this because the additional cost would be defrayed under the option/consortium agreement. A better access was available and under the control of the vendors. This was south of The Croft, near the Hospital entrance. It was, however, obvious that the local authority would not agree and there was little point in pursuing the matter with them or on appeal.

80. It was Mr Woodward's understanding of the position that, although Barratt have indemnified the Council as to the cost of acquiring the reference land, they can pass on the cost to the Dyffryn Dowlais owners.

PLANNING EVIDENCE

81. **Mr Powell** referred to the development of Meadow Farm and said that there were safety concerns about the Pen Yr Eglwys junction. In August 1986 the County Surveyor required the widening of the A473 and traffic signals in connection with proposed housing on the Dyffryn Dowlais site. The existing junction emerged from a dual purpose: to provide access to Dyffryn Dowlais and to increase safety standards at the junction which then had a priority arrangement. It was always the Council's intention to improve this junction.

82. The scheme underlying the acquisition is the widening and improvement of the A473 by the creation of a traffic signal controlled junction and associated works to provide satisfactory access to residential developments on either side, particular to the Dyffryn Dowlais site. He did not see the link road as part of the scheme. The acquisition came about because the developers of Dyffryn Dowlais required the County Council to use their compulsory purchase powers to allow junction improvements to be carried out as a necessary part of access to their development. In the no scheme world it is not necessary to disregard the link to the proposed bypass, only the junction improvements.

83. Mr Powell considered the development plan history and said that there appears to be no evidence to suggest that since 1983 any access point for the Dyffryn Dowlais site other than that constructed would have been acceptable to the local authority. He particularly referred to the Taff Ely Local Plan 1993, Policy t4 and para 8.32. In the no scheme world planning permission would not have been granted for the Dyffryn Dowlais site with access to the A473 elsewhere. This would have fettered the objectives of securing a direct link from Meadow Farm to the bypass, securing until at least 1993 a link to provide access from the laboratory expansion and the Dyffryn Dowlais development and securing an improved junction with traffic lights.

84. Mr Powell referred to the development history of the Dyffryn Dowlais site and said that, in his decision letter of 4 December 1997 (at para 10), the inspector in the Dyffryn Dowlais appeal said that he could see no direct link between the release of the site and the provision of the bypass. As the sole purpose of the link road was to join the bypass to the A473, it follows that planning permission for the Dyffryn Dowlais site was not dependent on the progress of the link road. The inspector stated that there was Council support for the development because it used compulsory purchase powers to acquire land for access to this site.

85. The development history of the Dyffryn Dowlais site demonstrates: continual support from the Council's planning officer and general support from the County subject to access at Pen Yr Eglwys junction; initial support for a roundabout at this junction; and a subsequent move by the County from August 1986 to see additional lanes and traffic signals.

86. In the no scheme world other options would have been a roundabout on the Dyffryn Dowlais site and an alternative junction along the A473. Mr Powell said, however, that permission would not have been forthcoming for either option. There were no credible options to the junction eventually constructed.

87. At the valuation date the Dyffryn Dowlais site was a sound prospect for residential development with two access points, from Station Road and from the A473. From 1983 there was no indication that access from the Dyffryn Dowlais site onto the A473 other than at Pen Yr Eglwys was formally considered by the Council. On three occasions the Council were asked to advise on alternative accesses, at The Croft and the Hospital entrance, and each time the reply was that an alternative would not be evaluated and the preferred option was the Pen Yr Eglwys junction. The Council would not have approved an alternative access to the A473. Such an access would have been in conflict with the development plans and the desire to achieve comprehensive development in the Llantwit Fardre area. It is preferable to limit the number of accesses onto a highway and the preferred option is always to use an existing junction, even if it requires upgrading at the developer's expense.

88. Mr Powell said that he recognised that the choice of the Pen Yr Eglwys junction as the right location for access to the Dyffryn Dowlais site was further supported by the junction of the A473 and link road at this point. However, even if this is disregarded in the no scheme world, the evidence still shows that the Pen Yr Eglwys junction would have been regarded as the only satisfactory location for the new junction.

89. In cross examination Mr Powell was asked to consider an alternative link from the A473 to the Church Village Bypass if the proposed link at Pen Yr Eglwys was not allowed. He said there were two alternative routes: across the Dyffryn Dowlais site from the Hospital junction to Station Road (and then south to the bypass) or from north to south across Dyffryn Dowlais from the Hospital junction to the proposed bypass. Both routes suffered from planning and development objections.

90. **Mr Ratcliffe** referred to the proposals and policies in the Local Plans relating to the Dyffryn Dowlais site, the Church Village Bypass and link road and access to Dyffryn Dowlais. He said that it can be inferred that Policy t5b in the 1984 Plan intended that the link from the A473 to the bypass was to benefit other development on the A473 in addition to the Dyffryn Dowlais site. It is correct to interpret paragraph 5.22 in this Plan as recognising that it would be expedient to use the link road as access to the Dyffryn Dowlais site. It was possible to access this land from at least one other point opposite the Hospital entrance. This would have been acceptable on planning grounds. The access at the Pen Yr Eglwys junction was to facilitate the link with the proposed distributor road.

91. In the Taff Ely Local Plan 1995, Policy t3 proposed a Dyffryn Dowlais link road to be provided as part of a new development scheme and supporting paragraph 8.30 stated that a single access is required to serve the Dyffryn Dowlais development, to be of a standard to serve as a link from the A473 to the bypass. This policy, said Mr Ratcliffe, referred to the provision and location of the link road, not the purpose. The primary purpose of the road is to make a link with the A473 and meanwhile it will also provide access to the Dyffryn Dowlais site.

92. The primary purpose of the road proposals at Dyffryn Dowlais has always been to provide a link to the Church Village Bypass, with access to the Dyffryn Dowlais site as secondary. But the immediate purpose of the improvement works at the Pen Yr Eglwys junction was to provide access to the Dyffryn Dowlais site. From a planning policy viewpoint there would have been little to choose between an access to the Dyffryn Dowlais site cutting through the woodland near the Clariant premises and one cutting through woodland opposite the Hospital entrance. Loss of woodland might have been less had an alternative access been used, which would have been preferable in policy terms. An access at a point other than Pen Yr Eglwys was less likely to have been given planning permission. Mr Ratcliffe acknowledged in cross examination that an access to the Dyffryn Dowlais site opposite the Hospital entrance would conflict with open space policies in the Local Plan and that this was not the position with Proposal t4 in the Taff Ely Local Plan 1995. If the proposed link to the Church Village Bypass had been on a different line to that proposed in the Local Plans, the Council would not have insisted on access to the Dyffryn Dowlais site at the Pen Yr Eglwys junction. It is likely that the A473 access would have been opposite the Hospital entrance.

93. Mr Ratcliffe said that the scheme underlying the acquisition is the provision of a local distributor road to the bypass, that is to say an access to the Dyffryn Dowlais site which also formed a link to the Church Village Bypass on the alignment in the Local Plan. This scheme first emerged in 1976. His concept of a scheme is that it comprises proposals by a public authority which cannot be achieved without the compulsory acquisition of land. A distributor road from the Hospital entrance through the Dyffryn Dowlais site would have been acceptable in planning terms. Mr Ratcliffe accepted that in the real world the access to the Dyffryn Dowlais site had to be at the point where the proposed bypass link meets the A473. No other access would be allowed as a matter of policy. Mr Ratcliffe acknowledged that before 1990 it was not the intention of the local authority to carry out any works at the Pen Yr Eglwys junction. They participated from that date to assist the developers of the Dyffryn Dowlais site. The commencement of compulsory purchase in 1990 was a significant change, but it was always in the contemplation of the local authority that the junction works would be carried out by the developers. The role of the Council was to acquire the reference land to allow the developers to carry out the junction improvement. The Council would not, however, have agreed to compulsory purchase procedures without the motivation of the link road. The purpose of the acquisition in this reference was to enable the Dyffryn Dowlais developers to improve the Pen Yr Eglwys junction.

94. Mr Ratcliffe acknowledged that it could not have been foreseen at the valuation date that the Council would have refused planning permission for residential development on the Dyffryn Dowlais site. If the Council had acted reasonably planning permission would have been granted on an application at that time.

95. Mr Ratcliffe said that there was nothing to stop the whole of the Dyffryn Dowlais development having access from Station Road. A sequence of development under the planning permission granted might have been: phase 1 development (75%) from a junction with the A473 and then phase 2 (25%) with access from Station Road.

96. As to the possible grant of planning permission for a neighbourhood centre on the public house site on the Dyffryn Dowlais land, Mr Ratcliffe referred to Policies CN35, C2, S13 and C7 in the Local Plan and said that they gave support to the provision of such a centre in 1996. There was evidence that in 1996 the developers had identified the public house site as having potential for a neighbourhood centre.

HIGHWAYS EVIDENCE

97. **Mr Good** said that planning permission was granted in 1973 for residential development at Meadow Farm and construction started in 1984. The proposed junction with the A473 was moved to the present Pen Yr Eglwys junction. This was to enable the construction of a roundabout to serve other land allocated for housing to the south of the A473. The County Council could not fund a roundabout and a priority junction was built but with a less than standard vision splay. This resulted in safety problems. The link to the Church Village Bypass was subsequently proposed to be connected to the A473 at this point. In about 1986 the proposal for a roundabout at Pen Yr Eglwys was changed to traffic signals.

98. Mr Good referred to the no scheme worlds proposed by the parties and said that the claimants' scheme appears to be correct because the compulsory purchase was principally made to improve the substandard Pen Yr Eglwys junction and to provide satisfactory access to the Dyffryn Dowlais site. It was not made because the Council intended to build the bypass or link road at that time, although the long term purpose of the scheme was to provide a link to the bypass. The Council's no scheme world comprised the junction improvements and stage 1 of the link road, all to be provided by the developers.

99. Referring to the claimants' no scheme world, Mr Good said that the evidence indicates that the local authorities required four situations which have now occurred. These are: access to the Dyffryn Dowlais site from the A473 at Pen Yr Eglwys; the bypass link to connect to the A473 at this junction; access to Dyffryn Dowlais to be common with the link road at the A473; and the Pen Yr Eglwys junction to be traffic signal controlled. In this no scheme world access to Dyffryn Dowlais would have been from the Pen Yr Eglwys junction and, if the Council had not intervened, the developers of the Dyffryn Dowlais site would have had to purchase the reference land by agreement to carry out the junction improvement works to make it acceptable to serve the new development.

100. In the Council's no scheme world, possible junctions on the A473 were constrained by three factors: the alignment of the A473; existing junctions and access points; and the need for adequate junction capacity. The alignment of the A473 limits the area of search from the Clariant premises to just north of the Hospital entrance. A new junction would need to be opposite or some distance from an existing junction. A new junction would need to be at Pen Yr Eglwys or opposite the Hospital entrance or between these two points (perhaps opposite

The Croft). As to capacity, a junction at Pen Yr Eglwys or at the Hospital entrance could be traffic signals or a roundabout. Between these points a roundabout could be provided. Possible constraints on these options were: statutory undertakers' plant, old mine workings and adjoining woodland. Also of relevance was the strategy for the management of the A473, namely to minimise the number of junctions and to introduce traffic signals rather than roundabouts. The critical issues were highway geometry, capacity and network management. An access to the Dyffryn Dowlais site opposite The Croft is unattractive and has been rejected by the County Council. The Pen Yr Eglwys junction access has been proposed by local authorities since the late 1970s. It appears in the view of the highway authority that it was comprehensive development in the area, rather than the proposed link road, which dictated that this junction should form the access to the Dyffryn Dowlais site.

101. In the Council's no scheme world the position is no different from the claimants' world. The same highway junction arrangements would have been insisted on by the highway authority and the Dyffryn Dowlais developers left to purchase the reference land to provide an improved traffic signal junction at Pen Yr Eglwys. There is no evidence that a junction other than that at Pen Yr Eglwys was ever seriously considered and no evidence that any other arrangement than signals was considered.

102. Overall, since 1983, the strategy has been a connection to Dyffryn Dowlais at Pen Yr Eglwys with traffic signals. This is the most sensible and appropriate arrangement. In either no scheme world, planning permission for the Dyffryn Dowlais site was only likely to have been granted on condition that highway access would be from a signal controlled junction at Pen Yr Eglwys. This would have required the purchase of the reference land.

103. Mr Good said that, applying the nationally adopted standards for roundabouts in TD16/93, a roundabout to appropriate standards could not have been built at the Pen Yr Eglwys junction without taking the reference land or land to the north of the junction. Mr Hird's layout on drawing 2013201/103 would not have been acceptable.

104. Mr Good considered Mr Llywelyn's evidence that one-third of the Dyffryn Dowlais site could be accessed from Station Road without access from the A473. He said that the Station Road access has always presented problems due to the traffic lights at the junction of the A473 and Station Road in the centre of Church Village. There is no evidence to support Mr Llywelyn's evidence. It is unlikely that planning permission would have been granted for significant development on the Dyffryn Dowlais site with access only from Station Road.

105. **Mr Hird** put in evidence a drawing showing a proposed traffic light junction opposite the Hospital entrance to serve the Dyffryn Dowlais site. It was based on a drawing prepared by Lawrence Rae Associates and approved by the Council on 8 December 1998. This junction could be constructed on land owned by the local authority and Mr Jenkins. A similar form of junction could be constructed at numerous locations along the A473. The fact that permission for a modified access at the Hospital entrance was granted for residential development at this point shows that a second access close to Pen Yr Eglwys would be accepted on traffic grounds. Mr Hird also put in evidence a drawing showing a proposed junction opposite The Croft. This was also based on a drawing approved on 8 December 1998. This would meet the

requirements for the spacing of junctions. It is a reasonable assumption that planning permission was unlikely to be granted with access to the Dyffryn Dowlais site opposite The Croft.

106. The highway authority have indicated that it is unlikely that a roundabout would have been acceptable at the Pen Yr Eglwys junction. Mr Hird put in evidence a drawing (201320/103) showing a schematic roundabout at this junction which could have been constructed on land outside the reference land (201320/103). This design could be carried forward to a detailed design.

107. Mr Hird said that there would have been no grounds for refusing development on the Dyffryn Dowlais site with 150 houses accessed from Station Road and 300 from the Pen Yr Eglwys junction.

VALUATION EVIDENCE

108. **Mr Crompton** confirmed details of the comparables at Cefyn Yr Hendy and Ty Draw Farm used by Mr Gibbon. He said that there was no significant difference between house prices per sq ft at Cefyn Yr Hendy and on the Dyffryn Dowlais land.

109. **Mr Gibbon** valued the reference land at £1,550,000. The purpose of the scheme underlying the acquisition was to widen and improve the A473 and to provide a signal controlled crossroads at the Pen Yr Eglwys junction, to cater for left and right turning traffic into existing and proposed side roads, and to provide improved and safer access to existing and proposed residential development. The reference land held the key to housing development on the Dyffryn Dowlais site. Principles relating to the valuation of an access or ransom strip were considered in *Stokes v Cambridge Corporation* (1961) 13 P & CR 77 and *Batchelor v Kent County Council* [1992] 1 EGLR 217; (1990) 59 P & CR 357.

110. Mr Gibbon said that consideration of the relevant development plans and the evidence of Mr Powell and Mr Good showed that from 1983 onwards the only access considered for the Dyffryn Dowlais site was at Pen Yr Eglwys.

111. The market value of the reference land must be determined in a no scheme world. The parties disagree on the extent of the scheme underlying the acquisition. In the claimants' no scheme world it is only necessary to ignore the widening and improvement of the A473. The link to the proposed Church Village Bypass from the A473 can be taken into account. In the Council's no scheme world it is necessary to ignore all, or stage 1, of the link road. In the claimants' no scheme world consideration is to be given to the likelihood of planning permission being granted for development of the Dyffryn Dowlais site with alternative access from the A473 in the knowledge that the bypass link is to be constructed on an alignment connecting with the A473 at the Pen Yr Eglwys junction. In the Council's no scheme world it appears that we are to consider the likelihood of planning permission being granted for the Dyffryn Dowlais site with access from an alternative point along the A473, ignoring the fact that a bypass link is to be constructed at Pen Yr Eglwys.

112. Mr Gibbon considered the highways evidence given by Mr Good and said that his conclusions are that, in the Council's no scheme world, planning permission for the Dyffryn Dowlais site was only likely to have been given with access from the Pen Yr Eglwys junction, as has in fact occurred. This is the most sensible and appropriate arrangement.

113. Mr Gibbon referred to the planning evidence given by Mr Powell and his conclusions that the development plan history shows that no access point for Dyffryn Dowlais other than the Pen Yr Eglwys junction would have been acceptable to the local planning authority; planning permission may not have been granted for the Dyffryn Dowlais site if access to the A473 had been proposed elsewhere; there was no credible alternative to the junction arrangement eventually constructed at Pen Yr Eglwys; and the Dyffryn Dowlais site was a sound prospect for development at the valuation date.

114. In preparing a valuation of the reference land it is to be assumed that there were no credible alternatives to the Pen Yr Eglwys junction as built, requiring acquisition of the reference land. This is the position in both no scheme worlds. The fact that the County Council required an indemnity from Barratt and that Barratt sought comfort that no ransom situation existed showed their concern that a ransom situation existed at the Pen Yr Eglwys junction. Mr Gibbon referred to the phrase "comprehensive residential development around Dyffryn Dowlais farm" in correspondence in February 1996 and said that this is not something to be disregarded under section 6 and Schedule 1 to the Land Compensation Act 1961 nor under the *Pointe Gourde* rule.

115. To find the value of the reference land as a ransom strip it is first important to establish the development value of the land ransomed, the Dyffryn Dowlais site. Mr Powell has said that the Dyffryn Dowlais land was ripe for development for 450 houses. Mr Gibbon referred to nine comparables between September 1992 and March 1998, which he analysed to show prices of between £160,000 and £275,000 per acre. He adopted £250,000 per net developable acre for the Dyffryn Dowlais site, including the public house site which he valued as a neighbourhood centre. He allowed for a 6% increase in land values between the valuation date and 1998. The comparables at Cefyn Yr Hendy show that land prices rose by 16.67% between 1994 and 1996. His price per acre produced a gross value of £8,662,500 from which Mr Gibbon deducted 10% for lack of planning permission at the valuation date (it would take 12 to 15 months to obtain permission), 11.25% (agreed) to reflect the scale and phasing of the development and agreed abnormal costs of £3,442,000, to produce a value of £3,379,719. Mr Gibbon had regard to the option to purchase the Dyffryn Dowlais site by Barratt and made no deduction for multiple ownership of the land. In cross examination he agreed that, if the option is not to be taken into account, the existence of five owners of the Dyffryn Dowlais site would have complicated the position. In answer to a question from me, Mr Gibbon said that the purchasers of the reference land at the valuation date would have been the owners of the Dyffryn Dowlais site acting together to realise the development value of their land. The application for planning permission and the option show that a joint purchase would have been agreed and that the existence of different ownerships at the valuation date would not have affected the value of the reference land.

116. The existing use value of the Dyffryn Dowlais site has been agreed at £275,000. The net development value of the land at the valuation date was therefore £3,104,719. In the absence

of an alternative access to the Dyffryn Dowlais site, 50% of that net development value should be attributed to the reference land as a ransom strip, giving a value of £1,550,000 (in the claimants' no scheme world). In the Council's no scheme world the percentage of development value would fall to about 25%.

117. **Mr Llywelyn** valued the reference land at a nominal £500. If the land had possessed ransom value at the valuation date it would have been £122,804. On an industrial value basis the reference land had a value of £5,300.

118. Mr Llywelyn said that he was advised that in the no scheme world developers of the Dyffryn Dowlais site would not have been required to provide access in a manner which made it necessary to acquire the reference land. Such developers would not have bid for the land. It would not have been incumbent on them, nor desirable, to include the costs of the link to the A473 in their development costs. Access could have been obtained by a shorter route at a number of points along the A473, none of which required the purchase of third party land. Consequently, the reference land had a only a nominal value.

119. Mr Llywelyn referred to the background to the acquisition, including the purpose of the scheme. The reference land was required to form a satisfactory junction between the A473 and an existing link from Meadow Farm Estate and the proposed first section of a future link to the Church Village Bypass. Access to the Dyffryn Dowlais site was to be created by a spine road which would form a junction with the stage 1 link road. There was no specific requirement in any of the Local Plans that access should be provided to the Dyffryn Dowlais site at any particular point. The only requirement was that "all new housing would be required to have satisfactory access."

120. Mr Llywelyn referred to the planning background and said that Mid Glamorgan County Council accepted that access to the Dyffryn Dowlais site could be created satisfactorily at other points on the A473, including opposite the Hospital entrance. No planning permission was required for the highway works on the reference land (see General Development Order 1988).

121. Mr Llywelyn prepared an alternative valuation of the reference land on a ransom value basis. He referred to eight comparable transactions between 1992 and 1994 at prices of between £80,000 and £180,000 per acre. The land market in Wales did not experience equivalent increases in value as elsewhere in 1994-95; between December 1993 and April 1996 prices rose by only 5%. But by the middle of 1995 increases in prices could be seen. The residential market in 1996 was encouraging: prices rose by 15-20% during the year (3.75-5% between April and August) and were perceived to continue to rise. Land purchases increased as developers increased their land banks. Against this background Mr Llywelyn adopted £175,000 per net developable acre for the residential part of the Dyffryn Dowlais site, less 11.25% quantum allowance. For the public house site he adopted a lower figure of £110,000 per acre (1.15 acre), based on a residual valuation and comparables, not put in evidence. His gross development value was £5,327,969. He then deducted the agreed abnormal costs of £3,442,000 to produce an adjusted figure of £1,885,969 from which he deducted the agreed existing use value of £275,000, to produce £1,610,969.

122. He then made further deductions for uncertainties relating to ownerships (five owners, option to be ignored), the grant of planning permission, mining, potential contamination from an old colliery gas main, and contentious rights of access through Dyffryn Dowlais Farm, and woodland and tree preservation orders. Mr Llywelyn applied a discount of 65% for these uncertainties to reduce his valuation to £563,839. The uncertainties regarding ownerships and planning accounted for 55% (40% ownership and 15% planning) with a 10% deduction for the other elements. In cross examination Mr Llywelyn conceded that, in the absence of tree preservation orders at the valuation date, his overall deduction could be reduced to 63% or 63.5%. As to multiple ownerships, Mr Llywelyn said that he believed that there were five owners. They would each have separate bargaining positions and different agents. Some may have been mavericks. Two owners were believed to have been indifferent to development. In cross examination Mr Llywelyn acknowledged that the owners had acted together in making planning applications and entering into the Barratt option.

123. Mr Llywelyn then made two further adjustments: a deduction of 33% to reflect the fact that at least one-third of the overall total developable area could have been developed with access from Station Road without any access from the A473; and a further 33% to reflect the fact that only one-third would be paid to the owners of the reference land on the *Stokes v Cambridge* principle. His valuation was finally reduced to £122,804.

124. Mr Llywelyn said that a developer of the Dyffryn Dowlais site, who was asked to pay a substantial ransom value for the reference land, would seek an alternative access elsewhere. He might pay industrial value plus an overbid to avoid this aggravation but he could not put a figure on this additional bid.

DECISION

Scheme

125. The first question for my determination is what is the scheme underlying the acquisition of the reference land?

126. **Mr Nardecchia** said that his primary submission is that the scheme is narrow and is limited to the widening and improvement of the A473 by the construction of a traffic signal controlled junction at Pen Yr Eglwys and associated works. The main supporting evidence is the County Council's resolution of 30 April 1992, the purpose specified in the compulsory purchase order and the description of the scheme in the Statement of Reason, which accompanied the order and must be taken to have superseded other draft statements and purposes which preceded it. The purpose of the scheme is given by the County Engineer in his report to committee on 30 April 1992 and in the order itself. This report superseded the earlier report of 26 July 1990. Although mention is made of connecting side roads nothing is said in the description of the scheme of any works for constructing the local distributor or link road, or part of if. The narrowness of the scheme is confirmed by the evidence of Mr Milsom and Mr Ratcliffe. The scheme is also narrow in a temporal sense; this is also supported by the evidence of these two witnesses. The scheme first came into existence on 26 July 1990, the date of the first resolution of Mid Glamorgan County Council.

127. The Council's identification of the scheme is unclear and confused. There are inconsistencies between the pleadings and Mr Horton's skeleton which were not clarified by the Council's witnesses. This lack of clarity suggests that the scheme should not include any part of the link road. Conversely, the claimants' case was adequately pleaded and the Council could not have been in doubt as to their identification of the scheme. The fact that the link road is to be built by private developers is important to the identification of the scheme (see *Bolton Metropolitan Borough Council v Tudor Properties Limited* [2000] RVR 292, 294-6). The Council use the phrase "Stage 1 of the Link Road" in their definition of the scheme. This has no settled meaning. It is used to mean the section of road to be built by the Dyffryn Dowlais developers which will eventually become part of the link road. The differences between the two identified schemes is limited to a section of road which is part of the Dyffryn Dowlais access road and was permitted under the 1999 permission.

128. If the Tribunal should disagree with a narrow scheme then the claimants' alternative scheme comprises the junction improvement works and the part of the link road shown on drawing 12A i.e. the length of road which would be part of the Dyffryn Dowlais site access in the short to medium term but also part of the link road in the long term.

129. The Council's wide scheme should be rejected on the facts. Physically and spatially it is wrong because the acquisition was not made so that the length of link road shown as t5b on the Local Plan Proposals Map could be built. This remains unbuilt and there are no firm plans to build it even now. The scheme did not come into existence before 1990. The link road policy in Local Plans from 1976 is not a scheme because it was intended that the road should be built by private developers as part of their development.

130. Mr Nardecchia referred to the recent decision of the House of Lords in *Waters v Welsh Development Agency* [2004] UKHL 19, particularly paras 58-63, 64-66 and 157. Six pointers are given in para 63 as to the extent of scheme. The claimants' scheme accords much better with this guidance than the Council's scheme, particularly pointers (1), (2), (5) and (6). Although helpful and relevant guidance is given in *Waters* as to the no scheme rule, the facts of that decision are of no assistance in this reference. In *Waters* it was argued that the only possible purchaser of the claimants' land at a figure above agricultural value was the acquiring authority, with a need to purchase for a nature reserve. This aspect of the scheme was said to be capable of being taken into account when assessing compensation. This was rejected but a distinction was drawn with ransom cases where there is a market for the land quite apart from that created by the acquiring authority and its scheme (paras 153-8). The claimants in this reference do not advance the same submissions as put forward in *Waters*. There is clear evidence to show that, if the acquiring authority had not intervened, there would still have been a market for the reference land with the Dyffryn Dowlais site owners or developers as the likely purchasers.

131. Although purpose is a relevant factor in defining the scheme, it is not the scheme itself. A scheme may have more than one purpose and the purpose may be defined at different levels. A scheme is likely to be defined according to its immediate rather than long term purpose (see *Waters* in the Court of Appeal (2002) RVR 289, 311 at para 98). The narrowness of the scheme and its purpose in this reference is emphasised by the fact that it only came into existence at the request of the Dyffryn Dowlais owners/developers. This is central to the

issues, as is the fact that the scheme works were to be carried out by the Dyffryn Dowlais owners or developers for their own benefit (albeit with an element of public benefit) rather than by the acquiring authority.

132. The legality of Local Plan Policy t5b is not an issue in these proceedings. The legality of a policy requiring developers to build the entire length of a link road was not raised until Mr Ratcliffe was asked to express an opinion on it. The Council did not insist on the developers building this length of road or even the shorter length shown on drawing 12A.

133. **Mr Horton QC** said that in the real world the reference land was acquired to ensure that access to residential development on the Dyffryn Dowlais site would be taken at Pen Yr Eglwys junction, where the northern section of the distributor road joined the A473. The Statement of Reason in the compulsory purchaser order is not necessarily conclusive evidence of the scheme underlying the acquisition. These reasons reveal that the purpose of the order was related to the proposal in the Draft Local Plan for a link road to the Church Village Bypass.

134. If objection had been made to the proposed compulsory purchase order the justification for the order would have been investigated. The issues examined would have shown the following. The Pen Yr Eglwys junction functioned satisfactorily and was not constructed to unacceptable standards. The need for improvement was not included in any lists of improvements in Local Plans. Access to the Dyffryn Dowlais site could have been provided elsewhere. The requirement that the junction be located at Pen Yr Eglwys was to facilitate and further the construction of the southern section of the distributor road, in particular stage 1 of the road, that is to say the link (t5b) shown on the Draft Local Plan at the time of the making of the compulsory purchase order. This road was shown terminating at a point where it met the southern boundary of the Dyffryn Dowlais site. Its alignment between that point and the proposed Church Village Bypass was not shown. This requirement had been a concomitant of the allocation of the Dyffryn Dowlais site for development since 1976. The requirement for the link arises out of the proposals in Local Plans for a Church Village Bypass. The function of the distributor or link road is to take traffic to the bypass. It has a more than acceptable alignment. The proposed bypass would substantially reduce traffic on the A473 and it was not necessarily vital therefore that a southern link had to be built. For the alignment of the bypass link to function as envisaged in the Local Plan it was necessary for the northern section of the A473 to have a junction design to appropriate standards.

135. It follows from the above that the scheme underlying the acquisition is the improvement and widening of the A473 at the Pen Yr Eglwys junction and stage 1 of the link road, namely the local distributor road from the A473 required pursuant to the Local Plan. This Plan did not show the entirety of the link road but only stage 1.

136. Mr Horton referred to the recent decision in *Waters* and said that it is striking that the House of Lords agreed that the nature reserve and barrage were part of a single scheme, despite the fact that work on the barrage started more than a year after the land for the reserve was identified and more than three years before the compulsory purchase order. The references in this decision to resolutions or documents in the plural suggest that the relevant evidence as to

the scheme is not limited to a single formal resolution or other document of the acquiring authority.

137. In the pleadings the claimants failed to adequately identify the scheme. It appears to be their case that, regardless of the identity of the scheme, there must always be assumed to be a requirement for sole access to Dyffryn Dowlais at the Pen Yr Eglwys junction.

138. The Statement of Reason for the compulsory purchase order included two elements: a junction with existing and proposed side roads and access to existing and proposed housing. Published with the order was a Statement of Purpose and it is clear from *Waters* that regard should be had to the reasons and purpose of a compulsory purchase order when identifying the scheme. The purpose of the order was to improve the Pen Yr Eglwys junction to enable the construction of the t5(b) link road, for residential development at Dyffryn Dowlais.

139. Mr Horton said that it is clear from the Draft Local Plans that the scheme to provide a link from the A473 to the bypass had its origins well before 1990. He referred to the relevant provisions in the 1984, 1987 and 1992 Local Plans and the 1989 planning application for the Dyffryn Dowlais site and said that, if the claimants have identified a scheme, it appears to be one to provide a new junction at Pen Yr Eglwys to serve the northern and southern distributor roads and to enable access to Dyffryn Dowlais from the southern link road. This definition is consistent with the Council's scheme in its Reply to the claimants' Statement of Case. It was accepted by the claimants during the hearing that stage one of the link road referred to the entire length of t5b shown on the Local Plan when the compulsory purchase order was made. The Council's pleaded scheme is in accordance with the compulsory purchase order resolution of 27 May 1992. This formulation that the implementation of t5b may have been the main, rather the sole, purpose, is to reflect the fact that there was also an aspiration that access to the Dyffryn Dowlais site by the developer should be taken off the link road. Mr Horton referred to alleged inconsistencies in the way in which the claimants have defined the scheme and the narrowness of their scheme. In *Waters* a narrow scheme was rejected.

140. Mr Horton referred to certain matters peripheral to the identification of the scheme. These included the letter of 9 May 1990 seeking a compulsory purchase order; the evidence of Mr Ratcliffe; a presumption that the compulsory purchase order was lawfully made and therefore justified in the public interest; evidence that the authority intended to carry out the works itself and that it would be unlawful for a developer to be required to bear the costs not required as part of a permitted development. It is clear that it could not be said that, but for the Dyffryn Dowlais development, the construction of the t5b link would not be necessary. The only basis on which it was lawful for the developers to pay for the junction improvement and for the first part of t5b was that, if Dyffryn Dowlais was to be developed with access at that point, the developers would have to pay to bring forward the requisite junction improvement and commencement of t5b, otherwise not yet programmed for implementation, although all the work would be necessary in due course regardless of the Dyffryn Dowlais development.

141. The developers paid for the land and the construction costs at the junction and the first few metres of the link road, but this did not make those works any less the Council's scheme. Furthermore it did not turn the scheme into the furtherance of the Dyffryn Dowlais

development rather than the furtherance of the t5b link and the junction it would inevitably require with the A473. Mr Nardecchia's submission that the link road was never intended to be part of the authority's scheme because it was to be constructed by developers, is wrong. Mr Nardecchia referred to the *Tudor Properties* decision but the facts of that case are entirely different.

142. Mr Horton referred to the claimants' alternative scheme (the junction improvement works and part of the link road leading to the Dyffryn Dowlais site) and said that it defines the scheme, not by reference to any documents of the promoters but by reference to a document produced by an application for planning permission. This is irrational but it accepts the Council's argument that the scheme had at its heart t5b in some guise or other.

143. The decision in *Waters* does not overrule the principle established in earlier cases that a scheme can have its origins before the compulsory purchase order (*Wilson v Liverpool Corporation* [1971] 1 WLR 302 was not overruled). A scheme can still be progressive.

144. **Decision** – The claimants contend that the scheme underlying the acquisition is the widening and improvement of the A473 at the Pen Yr Eglwys junction, including provision of a traffic signal controlled junction but excluding the proposed link road to the bypass. In the alternative the scheme is the junction improvement and the provision of the short length of access road leading to the residential development on the Dyffryn Dowlais site, which is also to form part of the link road from the A473 to the proposed Church Village Bypass. The Council contend that the scheme is the junction improvement works and the whole of the first stage of the link road as shown on the Local Plans leading towards the Church Village Bypass.

145. During the hearing the House of Lords gave its decision in *Waters v Welsh Development Agency* [2004] UK HL 19, to which I now look for guidance as to the identification of the scheme.

146. Lord Nicholls considered the approach to value in the Land Clauses Consolidation Act 1845 and the distinction drawn between value to the owner and value to the purchaser. It is out of this distinction that the scheme principle emerged. He said (para 21):-

> "Drawing a distinction between value to the owner and value to the purchaser makes it necessary to distinguish the one from the other. It is necessary to separate from the market value of land any enhancement in value attributable solely to the presence of the acquiring authority in the market as a purchaser of the land in exercise of its statutory powers. It is important to recognise that, for this purpose, it is not the existence of a power of compulsory acquisition which increases the value of land. What is relevant, because this may affect the value of the land, is the use the acquiring authority proposes to make of the land it is acquiring. Accordingly, in identifying any enhanced value which must be disregarded it is always necessary to look beyond the mere existence of the power of compulsory purchase. It is necessary to identify the use proposed to be made of the land under the scheme for which the land is being taken. Hence the introduction of the concept of the 'scheme' or equivalent expressions such as project or undertaking."

147. Lord Nicholls considered the development of the scheme principle, particularly the much quoted observation of Lord MacDermott that "compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition" (*Pointe Gourde Quarrying and Transport Co Limited v Sub-Intendent of Crown Lands* [1947] AC 565, 572). Lord Nicholls then said (para 43):-

> "Notoriously the practical difficulty with the Pointe Gourde principle lies in identifying the area of the 'scheme' in question. This difficulty does not arise when the enhanced value arises from the authority's proposed user of the subject land. Then, by definition, what is in issue is the proposed use of the subject land. But when regard is had to the authority's use or proposed use of other land the application of the principle is not self-defining. A major development project of a general character, covering a wide geographical area, may proceed in several phases, each phase taking years to implement, and the detailed content and geographical extent of each phase being subject to change and finalised only as the phase nears the time when the work will be carried out. Is that one scheme or several?"

148. He then proceeded to the identification of the scheme (para 58):-

> "I turn, then, to the question of how the extent of the scheme should be identified in today's conditions. A scheme essentially consists of a project to carry out certain works for a particular purpose or purposes. If the compulsory acquisition of the subject land is an integral part of such a scheme, the Pointe Gourde principle will apply accordingly. Both elements of a project, the proposed works and the purpose for which they are being carried out, are material when deciding which works should be regarded as single scheme when applying Pointe Gourde principle to the subject land."

Here Lord Nicholls emphasised that a scheme comprises works for a particular purpose or purposes and that both elements (works and purpose) are material to the definition of a scheme and the application of the Pointe Gourde principle.

149. The determination of a scheme is not solely a question of fact but requires the exercise of judgment (Lord Nicholls referred to it as a "judgmental exercise", para 61). He said (para 59):-

> The extent of a scheme is often said to be a question of fact. Certainly, identifying the background events leading up to a compulsory purchase order may give rise to purely factual issues of a conventional character. But selecting from these background facts those of a key importance for determining the ambit of the scheme is not a process of fact-finding as ordinarily understood."

150. The purpose of the Pointe Gourd principle must be borne in mind when deciding the extent of a scheme (para 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 no more than fair compensation. This is the overriding guiding principle when deciding the extent of a scheme."

151. Pointers to the application of the general principle are (para 63):-

(1) The Pointe Gourde principle should not be pressed too far. The principle is soundly based but it should be applied in a manner which achieves a fair and reasonable result. Otherwise the principle would thwart, rather than advance, the intention of Parliament. (2) A result is not fair and reasonable where it requires a valuation exercise which is unreal or virtually impossible. (3) A valuation result should be viewed with caution when it would lead to a gross disparity between the amount of compensation payable and the market values of comparable adjoining properties which are not being acquired. (4) When applied as a supplement to the section 6 code, which will usually be the position, the Pointe Gourde principle should be applied by analogy with the provisions of the statutory code. Thus in the class 1 type of case the area of the scheme should be interpreted narrowly, for instance, so as to embrace the property acquired under the compulsory purchase order and the property which probably would have been so acquired had it not been bought by agreement. In other cases, such as case 2, Parliament has spread the 'disregard' net more widely. Then it may be appropriate to give the scheme a wider scope. (5) Normally the scope of the intended works and their purpose will appear from the formal resolutions or documents of the acquiring authority. But this formulation should not be regarded as conclusive. (6) When in doubt a scheme should be identified in narrower rather than broader terms."

Lord Nicholls' guidance was agreed by Lord Woolf, Lord Steyn and Lord Brown.

152. The difference between the parties in this reference as to the scheme is narrow and relates solely to the question whether the whole or part of the link road to the bypass is part of the scheme? There is no special magic in the scheme or the no scheme world; they are steps towards the assessment of market value to the owner, removing any enhancement in value attributable solely to the presence of the acquiring authority as purchasers in the exercise of statutory powers for their proposed use of the land (*Waters* para 21). But value which exists independently of the scheme is part of value to the owner and is to be taken into account (*Waters* paras 64, 65 and 157). I return to this matter later in this decision.

153. Against this background I consider the identification of the scheme. I look first at the documents leading to the compulsory purchase order. Following a meeting (of which there are no minutes or other evidence), Mr P J Hewett of Keltecs (on behalf of the proposed developers of the Dyffryn Dowlais site) wrote to the County Engineer and Surveyor as follows:-

"We would be grateful, if we could, have your confirmation as discussed that Mid Glamorgan County Council would utilize their CPO powers to acquire the piece of land outlined in red to allow the road widening relevant to the traffic light controlled junction to be carried out by the Developers of the residential site."

This is the first indication of compulsory acquisition of the reference land. It referred solely to road widening at the Pen Yr Eglwys junction.

154. It led to the following report to the Highways and Transportation Committee on 26 July 1990:-

"ROUTE A473 LLANTWIT FADRE

PROPOSED LOCAL DISTRIBUTOR ROAD TO CHURCH VILLAGE BYPASS

ACQUISITION OF LAND

Policy t5(b) of the Llantrisant Local Plan states that a local distributor road shall be constructed through the proposed development at Dyffryn Dowlais in order to allow a new link to be provided from Route A473 to the proposed Church Village bypass. The developer of this estate is willing to construct the first stage of the local distributor road which will form a traffic signal controlled crossroads at the existing junction of route A473 and the Meadow Farm estate access road. However, the developer controls all of the land required for the proposals with the exception of a small area of land alongside route A473 which is required for road widening at the proposed traffic signals. The acquisition of this land would enable the development to take place and the first stage of the local distributor road to be implemented.

I RECOMMEND

(i) that a Compulsory Purchase Order be made in respect of the land coloured pink on the plan now submitted, required for the proposed local distributor road to the Church Village bypass."

The Committee resolved to adopt this recommendation. It includes reference to the first stage of the link road to be constructed by the developers.

155. Following agreement as to a larger area of land to be acquired, a further report was made on 30 April 1992 in similar terms:-

"A473 PRINCIPAL ROAD BRIDGEND TO PONTYPRIDD

IMPROVEMENT AT LLANTWIT FARDRE

ACQUISITION OF LAND

3.1 Committee on 26th July 1990, resolved to acquire land at Llantwit Fardre in connection with Policy T5(B) of the Llantrisant Local Plan to construct a traffic signal controlled crossroads with a new local distributor road. The first stage of the distributor road is to be constructed by the developer of the Duffryn Dowlais scheme. Detailed design has identified the area of land required for the highway scheme.

I RECOMMEND

i) that a compulsory purchase order be made in respect of the land coloured pink on the plan, number 5339.001, now submitted, for Widening of Route A473 Waterton Cross to Treforest Principal Road at Llantwit Fardre."

The Committee resolved to adopt this recommendation.

156. The Compulsory Purchase Order was made on 11 May 1992. It was accompanied by a Statement of Reason (sic) dated 15 April 1992. The purpose and description of the scheme are defined as follows:-

> "2. Purpose of the scheme
>
> The existing A473 is a major route from Bridgend to Treforest serving many Industrial Estates and thus being a major travel route to jobs along this principal road.
>
> The Llantrisant Local Plan identifies a Local Distributor Road, tb(5), with a junction on the A473 at Llantwit Fardre.
>
> Highway proposals include the widening and improvement of the A473 to provide signal controlled crossroads with a layout on the A473 to cater for left and right turning traffic to the existing and proposed connecting side roads.
>
> The proposed new highway layout will provide much improved and safer access to existing and proposed residential developments.
>
> 3. Description of Scheme
>
> The A473 carriageway will be three lanes of 3.65m width with the centre lane being used as a holding lane for right and left turning traffic. The connecting 7.3m single carriageway side roads, existing to the north and proposed to the south, forming the cross-roads.
>
> A 1.8m wide footway and 2.5m verge will be provided on the south side of the A473 at the widening."

157. Although this document refers to the distributor or link road shown as t5(b) in the current Local Plan (Llantrisant Local Plan Draft 1992), there is no reference to the building of the whole of the road as shown on the plan. The purpose of the scheme, at most, relates to the improvement of the Pen Yr Eglwys junction to cater for the link road connection at this point. The description of the scheme refers solely to the junction improvement works.

158. I look now at the documents leading to the works and the works which were carried out following the acquisition of the reference land.

159. On 31 October 1997 Barratt entered into a unilateral planning undertaking under section 106 of the 1990 Act in connection with their appeal in respect of the Dyffryn Dowlais site. This noted in recital (5) that the reference land "is required to construct the proposed access to" the Dyffryn Dowlais site "and has been compulsorily acquired for that purpose." On 10 September 1998 the County Council granted planning permission for a new road junction and part of the spine road at Dyffryn Dowlais. Shortly after, on 28 January 1999, the Council and Barratt entered into an agreement under section 111 of the Local Government Act 1972 and sections 1 and 278 of the Highways 1980 which included an agreement by Barratt to carry out junction works including part of the access road to the Dyffryn Dowlais site. These works

were carried out after 1999 and the widened section of the A473 and the spine road to Dyffryn Dowlais were adopted on 18 April 2001. The section of spine road as built, giving access to the Dyffryn Dowlais site, is shown on Plan 339/17A as part of the approval of reserved matters given on 10 September 1998. It was indicated in evidence where a possible junction with the link road might be, a short distance from the Pen Yr Eglwys junction. This is a shorter length and on a different alignment to the length of access or link road shown on drawing 12A which is marked as refused planning permission on 3 October 1997 under application 56/89/0694. The parties have agreed that the remainder of the link road to the proposed Church Village Bypass has not yet been built. The building of the Church Village Bypass and link road are still Local Plan policies but there is no indication as to when they might be built.

160. Barratt as developers of the Dyffryn Dowlais site carried out and paid for the Pen Yr Eglwys junction improvement works and the access or spine road into their development site. The remainder of the link road to the proposed Church Village Bypass was proposed in Local Plans to be provided by developers as required for development schemes. Mr Horton, however, recognised that the unbuilt length of link road may have to be paid for by the Council in the absence of justification by another development.

161. Also relevant to the identification of the scheme are the separate agreements made between the Council and the owners of part of the Dyffryn Dowlais site and Barratt regarding the reimbursement of the cost of acquiring the reference land. By an agreement dated 7 March 1996 two of the Dyffryn Dowlais owners agreed to indemnify the County Council in respect of the cost of acquiring the reference land. In their unilateral planning undertaking of 31 October 1997 Barratt also agreed to reimburse the cost. In my judgment it is unlikely that these owners and prospective developers would have agreed to meet the whole of the cost of the acquisition of the reference land if the purpose of the acquisition included the construction of the whole length of link road shown on the Local Plans. It was clearly in their interests to fund the acquisition to obtain access to the Dyffryn Dowlais site, leading to the grant of planning permission, but if one of the purposes of acquisition was the building of the remainder of the link (which would not benefit Dyffryn Dowlais), it seems likely that the owners and Barratt would have negotiated a lesser contribution to cost and not agreed to meet the whole cost.

162. Taking all these factors into account – the purpose and description of the scheme in the compulsory purchase order, the works carried out and the documents relating thereto, the payment for the works and for the acquisition of the reference land and the provision of the remainder of the link road – I have reached the conclusion that the scheme underlying the acquisition of the reference land comprises the widening and improvement of the A473 at the Pen Yr Eglwys junction and the construction of the short length of access road from that junction on to the Dyffryn Dowlais site, which also will serve as the first part of the link road to the Church Village Bypass. This is substantially the same as the claimants' alternative scheme. I reject their primary scheme as too narrow and I reject the Council's scheme, which includes all the link road shown on the Local Plans, as too wide. It would be wrong, in my judgment, to include in the scheme the length of link road which has still not been built some eight years after the acquisition and which may never be built.

163. I find that the scheme came into existence on 26 July 1990, the date of the first resolution to compulsorily acquire the reference land. There is no mention, express or implied, of

compulsory purchase before that date. The existence of policies or proposals to build a link road to the proposed bypass before that date in Local Plans were no more than planning policies or proposals and not a scheme underlying possible compulsory purchase. There is no indication before July 1990 that compulsory purchase powers may be used in connection with the improvement of the Pen Yr Eglwys junction and the building of the proposed link road. Those powers were suggested by the Dyffryn Dowlais developers, not the Council.

164. In *Waters* in the Court of Appeal [2002] EWCA Civ 924, Carnwath LJ referred to Lord Denning's well-known observation in *Wilson* that a scheme is progressive and said (para 47):-

> "Insofar as this implies that the 'scheme' may come into existence before any formal adoption by the authority concerned, it does not appear to be supported by authority, or consistent with principle …. where the acquisition is made under general statutory powers, the scope of the scheme should be apparent from an appropriate resolution or decision which provides the basis for the compulsory powers. The first preparatory stages may be vague and known to few, but they do not make it a 'scheme' of the authority as such."

165. Considering my findings as to the scheme in the light of the pointers in para 63 of *Waters,* I find that (2), (5) and (6) are relevant, at least at this stage in the decision. As to pointer (2) my narrower scheme (with a commencement date in July 1990) will produce a no scheme world which is close to the real world at the valuation date and will avoid any unreality in the valuation exercise. As Lord Nicholls explained (paras 59-61) the determination of a scheme involves judgment in addition to fact finding and, in my judgment, a narrower scheme with a more recent inception date will avoid the rewriting of history, as proposed by Mr Horton. The scheme follows the scope of the works and their purpose as set out in the documents of the acquiring authority. The narrower scheme which I have determined can be seen in the resolutions prior to the making of the compulsory purchase order and in the purpose and description of the scheme which accompanied the making of the order (pointer (5)). It is identified in narrower rather than the broader terms of the Council's scheme (pointer (6)).

No scheme world

166. The second question for my determination is the nature of the no scheme world. It is in this world that the market value of the reference land has to be determined.

167. **Mr Nardecchia** said that, following the definition of the scheme, it is necessary to consider the no scheme world, i.e. what is to be disregarded in valuing the claim. Section 6 and Schedule 1 to the Land Compensation Act 1961 do not apply. The judicial version of the no scheme principle to be applied is that compensation for compulsory purchase shall not include any increase in value entirely due to the acquiring authority's scheme (see *Pointe Gourde*). The principle is to be applied as it has previously been applied (see *South Eastern Railway v London County Council* [1915] 2 Ch 252; *Fraser v City of Fraserville* [1917] AC 187 and the Indian case [1939] AC 302 at 319-320). He said that the valuation has to be made on the basis that no compulsory purchase powers have been granted and that the scheme had not been, and was not to be, carried out by the Council. This disregards the effect on value of the scheme.

168. The application of the principle does not, however, in this case lead to any material diminution in the value of the reference land because the no scheme world is close to the real world and includes the projects or proposals for the bypass and the link road, the Dyffryn Dowlais site allocation and the housing and distributor road (Pen Yr Eglwys) already built to the north of the A473. In this world the market demand for the reference land is unaffected because the land is still required to construct the improved junction. The *Pointe Gourde* principle does not operate to disregard a pre-existent value, ie a value not entirely due to the scheme (*Batchelor v Kent County Council* (1990) 59 P & CR 357, 361). No grant of planning permission for the development of the Dyffryn Dowlais site with an alternative access point to the A473 could be expected.

169. Even if the Council's wider scheme is correct, the no scheme world still includes the bypass, the greater part of the link road, the residential allocation of the Dyffryn Dowlais site and Meadow Farm and adjoining residential development. The valuation consequences are not therefore materially different from those in the claimants' no scheme world.

170. This world is similar to the real world due to the narrowness of the scheme. The only disregard is that the Council agreed to use their powers in 1990 to take over the junction improvement works which it had expected the Dyffryn Dowlais owners or developers to carry out. It is not necessary to disregard the pre-scheme world, where a junction at Pen Yr Eglwys was intended for access to Dyffryn Dowlais and the link road. In this world the chances were nil or negligible of obtaining planning permission for development of the Dyffryn Dowlais site with access from another point on the A473. The position is the same under the claimants' scheme and alternative scheme: the Pen Yr Eglwys junction was the only access point from the Dyffryn Dowlais site onto the A473. There is no evidence to support the view that 150 houses could be built solely with access from Station Road.

171. The Council's case that the existence of the Pen Yr Eglwys junction should be disregarded because it was created as part of the scheme is unreal. This junction was built in 1984 when there was no scheme. This substandard junction as built is part of the no scheme world.

172. The Council's assumption that an alternative link road on a north to south alignment through the Dyffryn Dowlais site could meet the same need as proposed is prohibited by section 14(5)-(8) of the 1961 Act. Thus, the Council's no scheme world has to be a no link world rather than an alternative link road world. The Council are wrong to say that the decision to seek planning permission for the Dyffryn Dowlais site with access at Pen Yr Eglwys was in reliance on the compulsory purchase order. This decision pre-dates the order and must also pre-date any consideration of ransom value. If planning permission might have been granted with another access then why were no steps taken to achieve it? If these had been successful it would not have been necessary to request the use of compulsory purchase powers.

173. **Mr Horton** said that in modelling the no scheme world it is necessary to establish the physical facts and the planning policies. The value of the reference land is then to be determined having regard to those facts and policies. Any increase or decrease in value

resulting from the underlying scheme of acquisition is to be ignored (see the *Pointe Gourde* line of cases).

174. The Council's no scheme world is one in which there would have been no Local Plan policy for a link to the bypass on the route shown on the Plan. There was no requirement for such a link. There would still have been a bypass and a recognition that it would be necessary to ensure satisfactory access to it from Church Village, although not on the scheme world link alignment. It is not necessary to identify the route of such a link. Mr Horton referred to *Margate Corporation v Devotwill Investments Limited* [1970] 3 All ER 864 and *East End Dwellings Co Limited v Finsbury Borough Council* [1952] AC 109, 132, and said that the *Margate* decision was not overruled in *Waters*. Section 14(5)-(8) of the 1961 Act does not apply because the reference land was acquired in connection with the Council's future plans for the construction of a link road rather than in the actual construction of the road. It does not matter, however, whether these provisions apply, it should not be assumed in the Council's no scheme world that there would have been a link on another alignment. If the scheme included the t5b link alignment it is possible to consider whether a similar project on a different alignment would inevitably have been pursued. This could have been that shown in the 1976 Local Plan with the A473 access and link opposite the Hospital entrance.

175. In the Council's no scheme world the development of the Dyffryn Dowlais site would not have been dependent on the acquisition of the reference land. It would have been dependent solely on satisfactory access to the A473 but this could have been opposite the Hospital entrance with another access to Station Road. Further or alternatively, the Dyffryn Dowlais development could have had a layout with a link from the access south towards the bypass (as in the 1976 Local Plan). It follows therefore that the developers of the Dyffryn Dowlais site would have had no interest in the reference land for access. They would have preferred access to the A473 at the Hospital entrance or opposite The Croft. Any increase in value in the scheme world due to the Council's insistence on access at Pen Yr Eglwys is caused by the scheme and must be ignored. The arguments by the claimants that, even in the Council's no scheme world, the authorities would have required access to Dyffryn Dowlais at Pen Yr Eglwys carry no weight. No access to the Pen Yr Eglwys junction from Meadow Farm would have been provided and there would be no need to improve the junction or this could not have been a burden on the developers. The creation of a traffic signal junction at the Hospital with a T-junction at Pen Yr Eglwys is no less rational than the existing Hospital and Pen Yr Eglwys junctions. There would be a dog leg manoeuvre in either situation. Additional traffic on the A473 would not have been a sustainable highway objection.

176. There is no evidence to support the contention in the claimants' no scheme world that access to Dyffryn Dowlais had to be at Pen Yr Eglwys to allow a connection to the link road. There would be no objection to other access points. If the claimants are correct in their identification of the no scheme world, however, Mr Horton accepted that developers of the Dyffryn Dowlais site would have had an incentive to negotiate with the owners of the reference land.

177. Regardless of the identity of the no scheme world, interest in the Dyffryn Dowlais site would have been the same as in the real world, with the same difficulties. By analogy with the real world, it is rational to hypothesise that by the valuation date a planning application would

have been made for this site with access opposite the Hospital. Officers would have recommended the grant of permission; members may have resolved to grant it, with a subsequent retraction following public opposition. It is irrelevant that no such application was made in the real world because it is clear that the decision to seek planning permission with access at Pen Yr Eglwys was in reliance on the compulsory purchase and the belief that no ransom would be payable.

178. The option on the Dyffryn Dowlais site must be ignored in all no scheme worlds. Even if an option is to be assumed it should also be assumed that it would have been founded on the assumption that access could be at a point without ransom, because in the real world the Dyffryn Dowlais owners were only prepared to enter into such an option after they had satisfied themselves through correspondence that no ransom would be payable at Pen Yr Eglwys.

179. Mr Horton said that, since it is necessary to ignore the compulsory purchase, the improvement of the Pen Yr Eglwys junction and the t5b link proposal, it is necessary to identify their origins. As to the link this first appeared at the Pen Yr Eglwys junction in the 1983 Local Plan. But it was under consideration earlier in 1978. At that time the County Council wished to move the proposed Meadow Farm junction to the present location at Pen Yr Eglwys and the link also to that point. Rationality dictates that, in the Council's version of the scheme, access to Meadow Farm would have remained at the old position to the south west and there would have been no t5b link. The old position of the junction would have been to a satisfactory standard.

180. Turning to the claimants' no scheme world, Mr Horton said that it is contradictory to say that there would have been a requirement for a link road as part of the Dyffryn Dowlais development while also predicating the absence of a junction at Pen Yr Eglwys. This contradiction would have had to be resolved when considering proposals for development at Dyffryn Dowlais. Mr Horton made detailed criticisms of two possible versions of the claimants' no scheme world, which could not have emerged later than May 1990.

181. Mr Horton submitted that the claimants' alternative no scheme world is even weaker, particularly with regard to the point that the t5b link road alignment is to be disregarded as part of the scheme. It is central to the claimants' case that the prospect of planning permission for the Dyffryn Dowlais site with access to the A473 elsewhere than at Pen Yr Eglwys is negligible. This ignores the propriety in law and practice of seeking to require developers of that site to provide access in a fashion dictated by the wish to compel them to provide a junction to serve the t5b link and not the exigencies of the development of the site.

182. **Decision** – In *Wards Construction (Medway) Limited v Barclays Bank Plc* [1994] 2 EGLR 32, a later manifestation of the *Batchelor* case, Nourse LJ said (at 34D):-

> **"**In order correctly to apply the *Pointe Gourde* principle it is necessary, first, to identify the scheme and, second, its consequences. The valuer must then value the land by imagining the state of affairs usually called 'the no-scheme world', which would have existed if there had been no scheme."

In this reference the claimants' no scheme world is close to the real world; the Council's no scheme world involves departures from reality.

183. I refer again to *Waters*. The principle underlying the guidance as to the no scheme world is that this world should remain close to the real world at the valuation date; there should be no material rewriting of history. Lord Nicholls said (para 55):-

> "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. Lord Denning, in his accustomed style, referred to a valuer having to 'conjure up a land of make-believe' and 'let his imagination take flight to the clouds': see *Myers v Milton Keynes Development Corporation* [1974] 1 WLR 696, 704. 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': [2003] RVR 140, para 98."

In his pointers to the extent of the scheme, to which I have already referred, Lord Nicholls said (para 63):

> "(2) A result is not fair and reasonable where it requires a valuation exercise which is unreal or virtually impossible."

184. Lord Brown considered a possible wide version of the scheme underlying an acquisition, discussed in the Law Commission Report "Towards a Compulsory Purchase Code: (1) Compensation" (2003) (Law Commission No.286, Cm 6071) para 7.16(2), and said (para 148):-

> "Insofar as 'the wide version' of the rule described in para 7.16(2) of the report involves the disregard of 'the planning history over a much wider area [other than the order land] and dating back years', I too would deprecate it. If, indeed, that is thought to be the approach required following *Point Gourde's* reference to the 'underlying scheme' as subsequently interpreted, then in my opinion the rule has been developed impermissibly far and should now be narrowed down. Clearly, for example, it cannot be right that the valuer must let his imagination 'take flight to the clouds' as Lord Denning MR suggested in *Myers v Milton Keynes Development Corporation*… – see para 78 of Carnwath LJ's judgment below. As, however, Carnwath LJ observed (in para 89), although the words in *Pointe Gourde* – 'the scheme *underlying* the acquisition' – were new, it is clear from their context that they were not intended to differ from the words used by Lord Buckmaster in *Fraser v City of Fraserville* [1917] AC 187, 194, 'the scheme for which the property is compulsorily acquired'."

185. In the light of this guidance and my finding for a narrower scheme than that proposed by the Council, which commenced in July 1990, much later than the Council's scheme, I reject Mr Horton's no scheme world. It requires unacceptable departures from the real world, a partial rewriting of history, eg. no link to the proposed bypass on the line shown on the Local Plan, the Pen Yr Eglwys junction in the old proposed position, no option agreement.

186. In my judgment, the no scheme world at the valuation date was the same as the real world with two differences. First, there was no scheme to widen and improve the A473 at Pen Yr Eglwys junction and construct the short length of access road to the Dyffryn Dowlais site. Second, the Council had no compulsory purchase powers in respect of the reference land.

187. Valuation in this no scheme world excludes any additional value created by the scheme and any demand by the Council arising out of their compulsory purchase powers. These exclusions restrict value to the owner. These are the only exclusions from value: any value which pre-existed the scheme or exists independently of the scheme is to be taken into consideration, a matter which I consider in more detailed later in this decision.

188. It follows that the elements in the no scheme world (and real world) which affect the value of the reference land are as follows. The Pen Yr Eglwys junction is to be considered as it actually existed in April 1996, before improvement. It was built in 1984, some six years before the inception of the scheme, and comprised a priority T-junction. The Local Plan was the Taff Ely Local Plan Deposit Draft 1995, containing the allocation of the Dyffryn Dowlais site for residential development (h1.25), a proposed Church Village Bypass (t 1.2) and a proposed link road from the Pen Yr Eglwys junction to the bypass (t 3.3). Following earlier refusals of planning permission the Council resolved on 23 October 1989 to grant conditional planning permission in respect of application 56/89/0694 for residential development, public open space and public house site at Dyffryn Dowlais, subject to a section 52 agreement. On 12 March 1996 a further outline planning application was made (56/96/2007), later withdrawn. An option agreement dated 18 March 1996 existed between the Dyffryn Dowlais owners and Barrett. I must say a little more about this option.

189. It existed in the real world and I cannot accept Mr Horton's submission that it would not have been entered into in the no scheme world. He said that even if this is to be assumed, it is also to be assumed that access could be gained at a point which would have avoided a ransom payment. The owners in the real world had satisfied themselves that no ransom would be payable at Pen Yr Eglwys. He relied on the correspondence included in Mr Good's evidence. I cannot find in this correspondence any assurance or comfort that no ransom would be payable, sufficient to satisfy a reasonable and prudent owner. The letters do no more than indicate that an access opposite the Hospital would be considered on its merits, with an opinion by an officer of the County Council regarding ransom. I refer to this correspondence in more detail later when I consider the valuation adjustment for alternative access.

190. The option agreement was included in the evidence of Mr Woodward, who conducted negotiations with the owners on behalf of Barratt. Surprisingly it is not referred to in the statement of the agreed facts nor included in the trial bundle. It was referred by Mr Woodward in order to show that the additional cost of the Pen Yr Eglwys junction would be borne by the Dyffryn Dowlais owners. Mr Woodward did not give any evidence to the effect that the owners only entered into this option agreement because they were satisfied that no ransom would be payable. None of the owners gave evidence on this important point, although I was told that they have a financial interest in the outcome of this reference. I have no direct evidence to support Mr Horton's submission that the option agreement would not have existed in the no scheme world or that it is to be assumed that, if it did exist, there would have been an alternative access to avoid a ransom.

191. I look more closely at the elements of the no scheme world when I consider the value of the reference land.

Rule (3)

192. My third question is whether rule (3) of section 5 of the Land Compensation Act 1961 applies to the assessment of compensation for the reference land? This rule seeks to remove from consideration the special suitability or adaptability of the land for a purpose to which it could be applied only under statutory powers or for which there is no market apart from the requirements of an authority with compulsory purchase powers.

193. **Mr Nardecchia** said that the rule only applies where the land has special suitability or adaptability. In *Batchelor v Kent County Council* (1990) 59 P & CR 357 at 362, it was held that "special" means something exceptional in character, quality or degree, not merely the most suitable of alternative accesses. Although the House of Lords in *Waters* had reservations about this decision it allowed to it to stand (see paras 39 and 143). Clearly the reference land is the most suitable location for the new junction giving access to the Dyffryn Dowlais site but it is not the only access point. By raising the rule the Council have, in effect, conceded that no other suitable access points to the Dyffryn Dowlais site from the A473 existed. In *Hertfordshire County Council v Ozanne* [1991] 1 WLR 105 at 111 D-F, 112 and 113, it was held that the statutory powers must relate to the use of the acquired land and must be powers enabling the use of the land for a statutory purpose and to be necessary for that purpose. This excludes planning permission or other general consents. They do not include agreements to do works on land owned by a statutory authority.

194. Accordingly, rule (3) does not apply for two reasons. First, the works on the reference land could be carried out and applied to highway purposes without any statutory powers or consent granted by the highway authority. Second, although works carried out on the highway by a private developer require agreement with the highway authority, such consent is not a statutory power within rule (3). An agreement under section 278 of the Highways Act 1980 is not a statutory power. Section 72 of the Act does not provide that only a highway authority may widen a highway. A highway authority may make an agreement under section 111 of the Local Government Act 1972 and thus allow a person to go on to the surface of the highway to carry out approved works which may then be used by the public. This consent by the authority is not a statutory power within rule (3). Under section 228(1) of the 1990 Act a highway includes part of a highway.

195. **Mr Horton** said that if the reference land possessed a ransom value this would be precluded by rule (3) in any no scheme world. Two questions arise. The first is whether, on the assumption that the owners or developers of the Dyffryn Dowlais site were interested in the reference land for the purpose of widening the A473 to give access to the site, this gave the land special suitability or adaptability for that purpose? On the claimants' case, that planning permission would not have been given for any other access than Pen Yr Eglwys, it must follow that the land had such suitability. But *Batchelor* was wrongly decided in this respect (see *Waters* at paras 111, 112 and 143).

196. The second question is: was the purpose to which the reference land could be put only pursuant to statutory powers? The land was acquired to improve and widen the A473 pursuant to sections 239, 240 and 249 of the Highways Act 1980. In *Ozanne* the land was acquired for a new highway under section 214 of the Highways Act 1959. This is now section 239 of the 1980 Act but subsection (1) relates to the construction of highways whereas subsection (3) relates to the improvement of an existing highway. Only a highway authority has the power to undertake works to an existing highway or to widen a highway. Under section 278 of the 1980 Act a third party may be authorised to do those works but acts as the agent for the authority under statutory powers. The position is similar to that in *Cedar Rapids Manufacturing and Power Co v Lacoste* [1914] AC 569, referred to in *Ozanne* (at 112H) that the power to construct and develop water power adjacent to the St Lawrence River was conferred by statute and "would not be taken into account in a case to which rule 3 … applied."

197. **Decision** – Rule (3) of section 5 of the 1961 Act (as amended) is as follows:-

> "The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers."

Two questions are raised which must both be answered affirmatively if the rule is to apply. First, did the reference land have a special suitability or adaptability for any purpose? Second, was that purpose one to which it could be applied only in pursuance of statutory powers or for which there was no market apart from the needs of an authority possessing compulsory purchase powers?

198. The relevant purpose under the first question is the widening and improvement of the Pen Yr Eglwys junction and the provision of access to the Dyffryn Dowlais site. Did the reference land have a special suitability or adaptability for that purpose?

199. In *Batchelor* the facts are similar to those in this reference. The claimant owned two adjoining plots of land, one was compulsorily acquired for highway purposes and the other purchased following a counter-notice. On the town map they were shown as part of a larger area allocated for residential development. Outline planning permission had been granted for housing on a substantial area of land to the south and east of the two plots but subject to conditions inhibiting development until highway improvements were made. The acquiring authority built a roundabout on the claimant's land, which made it possible for the adjoining development to take place. One of the findings of the Tribunal was that there were other possible accesses to the land to the south and east and this excluded the "special suitability" in rule (3). On appeal Mann LJ said (at 362):-

> "However the rule is divided, one or other of the limbs can be motivated only if the land has a 'special suitability or adaptability.' This involves a consideration both of ordinary English words and of fact (as to the latter see *Blandrent Investment Developments Limited v British Gas Corporation* [1979] 252 EG 267 at 273. A special suitability can be found where land has a positional advantage for the purpose in hand (see *Raja Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer*

Vizagapatam). What then is 'special'? This ordinary word in its adjectival sense is given the following meaning in the *Oxford English Dictionary*:

> Of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree.

The Tribunal found that:

> the most suitable access to the land to the south is that which has been formed on the order land.

The Tribunal further found it 'was unable to find that the order land would have been the only access to the land to the south'. There were other options. The findings of the Tribunal in my judgment are decisive against a 'special suitability'. The order land may have been the most suitable land for access to the south but it was not specially suitable for that purpose. Most suitable does not correspond with specially suitable.

In my judgment the appeal by reference to Rule 3 fails in that the prefatory words of the rule are not satisfied upon the facts as found."

The decision was remitted to the Tribunal on other grounds.

200. In *Waters* the restriction of rule (3) in *Batchelor* and other decisions was criticised but allowed to stand. Lord Nicholls said (para 39):-

> "Over the years the courts have interpreted rule 3 narrowly. In an illuminating report the Law Commission said that in practice rule 3 appears to have little remaining purpose. It has effectively become redundant: see 'Towards a Compulsory Purchase Code: (1) Compensation' (2003) (Law Com No.286, Cm 6071), paras D94, D131, pp 203, 216. Some of the court decisions restricting the scope of rule 3 are open to criticism. But, like my noble and learned friend Lord Brown of Eaton-under Heywood, I would let them be. They do not seem to give rise to difficulties in practice. Where rule 3 is not applied the 'value to the owner' principle operates. Essentially this is a sound basic principle, although in recent years some difficulties have arisen. Subject to statutory provision to the contrary it should continue to be applied generally."

Lord Scott, in a dissenting judgment, said that the *Batchelor* interpretation of "special suitability" should be overruled (paras 111 and 112). Lord Brown observed that rule (3) has been increasingly marginalised and the *Pointe Gourde* principle expanded to fill its place (para 142). He then said (para 143):-

> "Again in common with Lord Scott (see his paragraph 112), I believe that rule 3 has hitherto been too narrowly construed, in particular by the Court of Appeal in *Batchelor v Kent County Council* … But again, rather than attempt to put back the clock and reinstate rule 3 at the expense of the *Pointe Gourde* rule, I am inclined to treat the latter as the prevailing law."

201. In my judgment, the "special suitability" test used by Mann LJ in *Batchelor*, although criticised, still stands. It was applied by the President in *Waters*, and not overruled in the Court of Appeal or House of Lords. It should be applied in this reference.

202. I consider later in this decision the question of access to the Dyffryn Dowlais site from the A473. It is sufficient to state for this part of the decision that, although access at the Pen Yr Eglwys junction was the most suitable and the one most likely to have received planning permission, there was at least one other possible access (opposite the Hospital entrance). As I find later, at this point there was the possibility of the grant of planning permission (albeit remote) and therefore it cannot be wholly disregarded. Accordingly, although the reference land was needed to provide a junction improvement which gave the most suitable access to the Dyffryn Dowlais site, there was at least one other option and this removed the special suitability from the reference land. Adapting the words of Mann LJ in *Batchelor*, although the reference land was the most suitable for the purpose of access it was not specially suitable, due to the existence of another possible access. The first requirement of rule (3) is therefore not satisfied and on this ground alone the rule does not apply. I will, however, consider the second question.

203. There are two alternatives. The first relates to the need for statutory powers for highway works on the reference land, the purpose for which it was said to have a special suitability or adaptability. Statutory powers were required to widen and improve the A473 at Pen Yr Eglwys junction (sections 239, 240 and 249 of the Highways Act 1980 are referred to in the compulsory purchase order), but the reference land was not part of the highway. No statutory powers were needed for works on this land: the exercise of statutory powers related to works on other land. In my judgment, the decision of the House of Lords in *Ozanne* takes the case outside rule (3).

204. In *Ozanne* the claimants' land adjoining the south side of a lane was compulsorily acquired. The purpose of the acquisition included the construction of a new highway. No stopping up order was made in respect of the existing lane and no part of the lane that could be affected by any such order lay within the claimants' acquired land. The sole ground of appeal to the House of Lords was whether rule (3) applied. Lord Mackay, giving judgment, said (at 111D):-

> "The special suitability or adaptability of the land for any purpose is directed to be left out of account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers. This is expressed in the passive voice but the context shows that the application referred to is by a person using the land and, therefore, the statutory powers in question must be powers enabling a person entitled to use the land to apply it to the purpose in question and since the purpose in question is one to which the land could be applied *only* in pursuance of the statutory powers the statutory powers must be necessary to enable such person to use the land for that purpose. I do not see how statutory powers not related to the use of the land acquired could form a basis for the application of this part of the rule.
>
> Therefore, I consider that statutory powers conferred upon the Secretary of State to order the stopping up of a highway on land which is not part of the land being acquired could not form the basis of the application of this part of the rule to the land acquired. Since the only statutory powers here relied upon by the council are the statutory powers of the Secretary of State to stop up parts of Thorley Lane, I consider that the council's argument must fail."

Later he said (at 113B):-

> "… in the present case the land acquired could have been used for a highway without the exercise of any statutory power and certainly was not dependent upon the Secretary of State exercising any statutory power to stop up any part of Thorley Lane."

205. He then drew a distinction between a general statutory consent (eg planning permission), which does not fall within the rule, and a particular statutory power (113C):-

> "This I think goes to emphasise the distinction referred to by counsel for the claimants when he pointed out that, if the present case were covered by the rule, it was very difficult to see why the rule should not also cover a purpose to which a piece of land could be put only after obtaining some particular statutory consent such as planning permission, consent under the Building Acts, or the like. It is clear from the modern statutory provisions governing compensation for the compulsory acquisition of land and the question of what types of development would receive planning consent is highly relevant to the determination of compensation for compulsory acquisition and any construction of the provision founded upon which resulted in any enhancement of the value of a piece of land resulting from its use for a purpose which required planning permission being disregarded would be absurd."

He agreed with the Tribunal's conclusion that "the first limb of the provisions of rule (3) cannot apply in that special suitability or adaptability of the land can be realised other than by the use of statutory powers."

206. I find that the same position applies in this reference. No statutory powers were needed for the works on the reference land: the exercise of statutory powers related to works on the public highway adjoining the reference land. A suitability or adaptability of the reference land for highway works as part of the improvement of the Pen Yr Eglwys junction could be realised without statutory powers.

207. A second alternative requires that there should be no market apart from the requirements of an authority possessing compulsory purchase powers. This is clearly not the position in this reference. The reference land was of interest to the developers and owners of the Dyffryn Dowlais site, whether at ransom value or at a lower figure. As I find later, it was the key, or at least the most important key, to the realisation of the Dyffryn Dowlais development. The Council acquired the land at the request of the Dyffryn Dowlais developers and owners but would not have done so in the absence of such a request.

208. For the reasons set out above, I find that rule (3) does not apply. The suitability or adaptability of the reference land for the highway works needed to give access to the Dyffryn Dowlais site can be taken into account when assessing the market value of the land.

Value

209. My final question is, having regard to the answers to the above three questions, what was the market value of the reference land at the valuation date (27 April 1996) under rule (2) of section 5 of the Land Compensation Act 1961? Mr Gibbon says that the land had a ransom

value of £1,550,000; Mr Llywelyn puts the value at a nominal £500 but, if ransom value existed, it was only £122,804.

210. **Mr Nardecchia** said that a 40% discount for ownership difficulties (as made by Mr Llywelyn) does not reflect reality. The hypothetical purchaser is a person who would reflect reality by embodying what would have been the demand for the land at the valuation date (see *Lady Fox's Executors v Commissioners of Inland Revenue* [1994] 2 EGLR 185 at 186E; *Ryde International Plc v London Regional Transport* [2004] RVR 61 at 63 (para 18); and *Corton Caravans and Chalets Limited v Anglian Water Services Limited* [2003] RVR 323 at 336 (para 109)). The likely purchasers of the reference land would have included the owners of the Dyffryn Dowlais site. There is no evidence to warrant a deduction for multiple ownership. There would have been an option agreement in the no scheme world, but this is not necessary to the claimants' case. In the pre-scheme world the owners acted jointly in making planning applications and were represented by the same firm.

211. In the claimants' no scheme world the reference land possessed a significant ransom value as the sole key to the development of the Dyffryn Dowlais site. This value existed prior to the scheme and is not to be disregarded under the *Pointe Gourde* rule (see *Batchelor* at 361). The valuation must be made on the basis of facts and circumstances known to the hypothetical purchaser at the valuation date, eg he would not have known that the Council would refuse planning permission for the Dyffryn Dowlais site in 1997 contrary to the 1989 resolution and the housing allocation in the Local Plan.

212. **Mr Horton** said that, in the absence of compulsory purchase, the reference land did not possess a ransom value because such a value was premature in the absence of planning permission for the Dyffryn Dowlais site. It was not yet known whether the reference land would be a pre-requisite to the development of Dyffryn Dowlais.

213. As to ransom value in the no scheme world, Mr Horton said that in the Council's world there would have been no basis for requiring access to Dyffryn Dowlais at the Pen Yr Eglwys junction and the developers would have had no interest in doing so. There would have been no ransom negotiations at Pen Yr Eglwys or opposite the Hospital entrance. In the claimants' no scheme world, the owners or developers of the Dyffryn Dowlais site would not have accepted that the reference land was, or ever likely to be, a pre-requisite to the development of the Dyffryn Dowlais site. There was a realistic prospect of the grant of planning permission with access opposite the Hospital or at The Croft. At the valuation date they would not have negotiated at all with the owners of the reference land. The Dyffryn Dowlais owners would have adopted a policy of wait and see and would have refused to enter into negotiations.

214. I disregard Mr Horton's submission which involves reworking Mr Llywelyn's valuation to produce a ransom of 15.4% compared to his figure in evidence of 33%. In my judgment, this is evidence which only Mr Llywelyn could give and which he did not give at the hearing. New evidence cannot be introduced for the first time in closing submissions.

215. I refer later to submissions on a possible access to the Dyffryn Dowlais site at a point opposite the Hospital entrance.

216. **Decision** – The market value of the reference land must be determined in the no scheme world, which I have found closely resembled the real world at the valuation date, disregarding only the improvement and widening of the A473 at the Pen Yr Eglwys junction (including the short length of access road on to the Dyffryn Dowlais site) and ignoring the Council's compulsory purchase powers. What is in dispute is whether the reference land had a ransom value, or key value, and whether compensation is properly payable for such a value.

217. In *Waters* Lord Nicholls said:-

> "64. One last point should be noted before returning to the present case. This concerns so-called 'ransom' value or, less pejoratively, 'key' value. I have already mentioned that under the 'value to the owner' principle or the Pointe Gourde principle, whichever nomenclature is preferred, the pressing need of an acquiring authority for the subject land as part of a scheme should be disregarded when assessing its value for compensation purposes. The value of the land is not the price a 'driven' buyer would be prepared to pay. But a strip of land may have special value if it is the key to the development of other land. In that event this feature of the land represents part of its value as much for purposes of compensation as on an actual sale in the open market.
>
> 65. The intersection of these two principles was identified neatly by Mann LJ in *Batchelor* …, 361:
>
> > 'If a premium value is 'entirely due to the scheme underlying the acquisition' then it must be disregarded. If it was pre-existent to the [scheme] it must in my judgment be regarded. To ignore the pre-existent value would be to expropriate it without compensation and would be to contravene the fundamental principle of equivalence.'"

Lord Brown agreed (see paras 140 and 157).

218. In my judgment, the acquisition of the reference land is a good example of ransom value, whether in the real world or the no scheme world. If the Council had not intervened with their compulsory purchaser powers (at the request of the developers of the Dyffryn Dowlais site and most likely purchasers of the reference land), and on the assumption of a sale in April 1996, both vendor and purchaser of the reference land would have known that it effectively held the key (or at least the most important key) to the development of the Dyffryn Dowlais site.

219. It is not in dispute that the reference land was essential for works to widen and improve the A473 at the Pen Yr Eglwys junction to take an access road to the Dyffryn Dowlais site and later the link road to the Church Village Bypass. The prospect of the grant of planning permission for Dyffryn Dowlais with access to the A473 at Pen Yr Eglwys was considerably greater than at any other point on this road. It is common ground that an access opposite The Croft was not a realistic alternative. Both parties to the sale of the reference land in April 1996 would have known that, although the possibility could not be completely disregarded, planning permission with an access opposite the Hospital entrance was unlikely to be granted – it was no more than a remote possibility. Furthermore, the Council owned part of the land needed for a junction at this point; the position in law was not entirely clear; and there may well have been another ransom situation at this location. Both issues are considered further below.

220. Against this background the prospective developers of the Dyffryn Dowlais site would have recognised that payment of ransom value for the reference land was necessary if they were to obtain planning permission to unlock the development potential of the Dyffryn Dowlais site. The price would have taken into account the lack of planning permission at the valuation date and the remote possibility of an alternative access, but it would still have reflected the high value of the reference land to the Dyffryn Dowlais developers or owners. It is unreal to suggest that the vendors of the reference land would have parted with this land for only £500 or that the purchasers would not have bid in excess of this figure.

221. It would be wrong, and contrary to the underlying principle of equivalence or fair compensation, for the claimants to be deprived of a value which existed independently of the scheme by an acquisition under compulsory powers. In *Batchelor*, a case with similar facts, following the second hearing before the Tribunal, the member (T Hoyes) said (at 222C):-

> "It is accepted that the order land falls to be valued disregarding the scheme underlying the acquisition, identified above, and the fact that the acquisition is taking place under compulsion. It is not disputed that the market for the order land effectively comprised prospective developers of the Grove Green area of which Wards were the most prominent. It is also accepted that if the order land is found to be endowed with some measure of premium value, the amount is entirely in issue, that sum is to be treated as having accrued independent of the scheme. In essence, what falls to be ascertained is the bargain which would have been made between the claimant and a prospective developer-purchaser had the acquiring authority not intervened."

On appeal Nourse LJ described that paragraph as an "entirely correct direction as to the application of the *Pointe Gourde* principle" (see *Wards Construction* at 34J).

222. I am satisfied that the reference land possessed a ransom value at the valuation date, which may be properly taken into account when assessing the compensation payable to the claimants. The amount is in issue within a bracket of £122,804 and £1,550.000. I now deal with the amount and follow the form of valuation used by Mr Gibbon and modified by Mr Llywelyn, namely deducting from the development value of the Dyffryn Dowlais site the agreed existing use value and then attributing a percentage of the difference in value (or uplift) to the reference land as the price of that land.

223. I start with the value per acre. Mr Gibbon adopted £250,000 for both the net residential area and the public house site; Mr Llywelyn used £175,000 and £110,000 respectively. I was referred to nine comparables, three of which were used by both valuers. I give no weight to five of Mr Llywelyn's comparables for lack of adequate and reliable information. These are: Pontyclun, Llanharry, Llanharen, Nant Celyn and Gwaun Misgyn.

224. I find that the two best comparables are Ty Draw Farm and the Dyffryn Dowlais site itself. In September 1992 Westbury purchased by tender a site at Ty Draw Farm, Upper Church Village (only a short distance from Dyffryn Dowlais) at a price of £1,500,000. The net residential area was 12 acres. Abnormal costs were £420,000. The price plus abnormal costs gives a value of £160,000 per acre. In March 1998 Barratt/Beazer purchased the first tranche

of the Dyffryn Dowlais site (14.18 acres net) at a total price of £2,050,000. Abnormal costs were £1,707,000 giving a price per acre of £264,950.

225. These comparables are either side of the valuation date, with the need to relate them to that date by reference to changes in residential land values between 1992 and 1998. Mr Gibbon said that values rose by 6% between 1996 and 1998 and referred to a 16.67% increase in prices at Cefn Yr Hendy between 1994 and 1996. Mr Llywelyn thought that there was a 5% increase in prices between December 1993 and April 1996; in 1996 prices rose 15-20% during the year, 3.75 to 5% from April to August.

226. Some indication of changes in residential land prices can be found by analysing the four sales at Miskin Heights, Cefn Yr Hendy, some 3½ miles south west of Church Village. These transactions were at various dates within the period December 1993 to June 1996. The first was in December 1993, of a site of 34 acres (net), the others were smaller areas of between 3.5 and 5.3 acres; the use of the first transaction in the comparison thus adding the complicating factor of comparing large and small sites. Nevertheless, these transactions give some guide. Between December 1993 and June 1996 the price per acre rose by 33.8%; between December 1993 and September 1994 by 14.4%; between September 1994 and 1995 by 4.3%; between September 1995 and June 1996 by 12%; and between September 1994 and June 1996 by 16.9%.

227. At Ty Draw Farm the price of £160,000 per acre in September 1992 must be increased to relate it to higher values at April 1996. At Cefn Yr Hendy the increase from December 1993 to June 1996 was 33.8%. If a 40% increase is used for the longer period from September 1992 to April 1996 this indicates a price per acre in the region of £224,000 in April 1996 at Ty Draw Farm.

228. The sale of part of the Dyffryn Dowlais site in March 1998 must be related back to lower values at April 1996. The only evidence I have of the changes in values between 1996 and 1998 is Mr Gibbon's opinion of a 6% increase, which I think is too low. On the basis of the Cefn Yr Hendy figures I consider that the rise over this two year period was in the region of 15%, giving an equivalent figure of just over £230,000 per acre in April 1996.

229. These two comparables produce figures of £224,000 and £230,000 as at April 1996. The Dyffryn Dowlais transaction is clearly the best comparable as it relates to the property being valued and I adopt this figure for the residential land value at Dyffryn Dowlais at the valuation date (£230,000 per acre). It is not out of line with the other comparables outside Church Village which show a range of prices for the period December 1993 to August 1997 between £188,630 and £235,471 per acre. At Dyffryn Dowlais the residential land had a total value of £7,571,600, in April 1996.

230. Mr Gibbon has used a residential value per acre for the public house site on the grounds that it could be developed as a neighbourhood centre and valued at residential prices. Mr Llywelyn used a lower price per acre (£110,000 compared to £175,000) which he said was based on comparables and a residual valuation but none of this supporting information was produced in evidence. I agree with Mr Llywelyn that the public house site had a lower value

than the housing land. From my inspection and having regard to the proximity of Church Village, with shops and public houses, to Dyffryn Dowlais, it is unlikely that a high value would be placed on this non-residential site. Mr Llywelyn has adopted a value of 63% of his residential value; I agree this relationship in values. Applying this percentage to a residential value of £230,000 gives £140,000 per acre for the public house site, a total value of £250,850.

231. The total gross value of the Dyffryn Dowlais site is £7,822,450. The parties have agreed that a quantum allowance of 11.25% should be applied. I agree with Mr Gibbon that this should relate to the whole of the land, including the public house site. This allowance is £880,026, reducing the gross value to £6,942,424, which represents the value of the Dyffryn Dowlais site with planning permission, subject to an agreed deduction for abnormal costs and possibly other deductions.

232. At the valuation date the Dyffryn Dowlais site did not have planning permission for residential development. Both valuers have made a deduction for lack of permission, Mr Gibbon 10%, Mr Llywelyn 15%. The position at the valuation date in April 1996 was as follows. In Local Plans since at least 1976 the site has been allocated for residential development. The Plan at the valuation date was the Taff Ely Local Plan Deposit Draft 1995. Dyffryn Dowlais was allocated for housing under Policy h1.25 for 450 units. Housing development was required to have satisfactory access. By the valuation date four planning applications had been made for residential development. In November 1986 and September 1987 the first two applications were refused as premature on highway grounds. An appeal was lodged in respect of the second refusal but held in abeyance pending a further application. On 23 October 1989 the local planning authority resolved to grant outline planning permission on a third application for residential development, public open space and public house (56/89/0694) subject to a section 52 agreement, which in 1990 was confined to phasing and open space. This agreement was not completed and no planning permission was granted. On 12 March 1996 a further outline application was made and subsequently withdrawn.

233. It is common ground that I should not take into consideration events which occurred after the valuation date. The question is what allowance (between 10 and 15%) would have been made in April 1996 by a purchaser of the Dyffryn Dowlais site for the lack of planning permission? To avoid double counting I leave out of consideration here the question of access to the A473 which I reflect at the end of my valuation in my percentage of uplift in value attributable to the reference land. In my judgment, there was a good prospect of the grant of permission in April 1996, for housing at Dyffryn Dowlais, having regard to the Local Plan allocations and the resolution of October 1989. I do not think it could have been foreseen that in the year following the valuation date the local planning authority would have resolved to refuse planning permission, contrary to their officers' recommendation, although a successful appeal would have been anticipated. For these reasons I prefer Mr Gibbon's lower deduction of 10%.

234. The parties have agreed that a deduction of £3,442,000 should be made for abnormal costs. These two deductions reduce the value to £2,806,182.

235. Mr Llywelyn then made further deductions which are not made by Mr Gibbon. The first is for multiple ownership of the Dyffryn Dowlais site, 40%. In my judgment, there is no persuasive evidence to support this deduction. The owners of the Dyffryn Dowlais site co-operated in the grant of an option to Barratt and in the making of planning applications. I heard no evidence to support Mr Llywelyn's statement that two of the owners were unwilling to sell. The Dyffryn Dowlais owners have a financial interest in the outcome of this reference and I would have expected one or more of them to have given evidence in support of this deduction if there was any substance in it. At the valuation date Barratt had secured an option to purchase the whole of the Dyffryn Dowlais site which I have found would have existed in the no scheme world. I reject Mr Llywelyn's deduction for multiple ownership.

236. Next, Mr Llywelyn made a deduction of 10% (reduced at the hearing to 8 or 8.5% for his error in assuming that Tree Preservation Orders existed at the valuation date) for past mining on the land, potential contamination from an old colliery gas main and for a contentious right of way. I find there is no reliable evidence to support any part of this deduction. As I understand the position there is an allowance in the agreed abnormal costs for dealing with past mining activity, and I reject Mr Llywelyn's claim that mining operations would have put a stigma on the land, warranting a further deduction. I heard no evidence at all as to the existence of the gas main nor as to why the right of way is contentious, other than Mr Llywelyn's vague reference to anecdotal evidence. I noted on my inspection that this right of way is now an attractive footpath through the housing development and I cannot see how it has adversely affected the layout and value.

237. There is no evidence to support Mr Llywelyn's further deduction of 33% on the grounds that one-third of the development could have been accessed solely from Station Road. All the planning applications and the planning permission granted have two accesses, from the A473 and Station Road respectively. I accept the evidence of Mr Good that the narrowness of Station Road and the busy crossroads in Church Village would have prevented the grant of planning permission for a development of part of the Dyffryn Dowlais site with sole access from Station Road. Furthermore, the Local Plan current at the valuation date required a single access from the A473 to serve the Dyffryn Dowlais site. I reject this deduction.

238. My rejection of all these deductions leaves the development value of the Dyffryn Dowlais site at £2,806,182. Both valuers agree that the existing use value (£275,000) should be deducted to give the uplift in value attributable to the necessary access to the A473. My uplift in value is £2,531,182 and the final question is what proportion of this figure would have been paid for the reference land to provide that access. Mr Gibbon said 50% on the grounds that the reference land provided the only access to the Dyffryn Dowlais site. Mr Llywelyn's figure is 33% because he said that there was alternative access opposite the Hospital entrance. It became common ground during the hearing that planning permission would not have been granted with access opposite The Croft.

239. There are two matters for consideration here: whether planning permission would have been granted with access opposite the Hospital entrance and whether there was a potential ransom situation at this point. For both matters I am not required to make a definitive decision but must decide how vendor and purchaser of the reference land would have viewed the

position and the effect it would have made on their negotiations and the price agreed for the reference land.

240. **Mr Nardecchia** said that in the no scheme world the chances of obtaining planning permission for development of the Dyffryn Dowlais site with access from a different point on the A473 than Pen Yr Eglwys were nil or negligible. Suggested access points are opposite The Croft and at the entrance to the former Hospital. A different access would have been in conflict with Local Plans since 1983. Since 1986 the Dyffryn Dowlais owners had been attempting to obtain planning permission but at no time did they put forward an access other than Pen Yr Eglwys. They preferred the uncertainties and delays of a compulsory purchase order rather than seeking planning permission at an alternative location. Barratt as prospective developers made the same judgment, even though they recognised a ransom problem in 1994.

241. The evidence regarding alternative locations comprises correspondence with officers of the highway authority in 1995 and 1996. Various reasons for the Pen Yr Eglwys junction were given including the rationalisation of existing junctions, the need to improve the Pen Yr Eglwys junction and comprehensive development. These are valid and relevant planning reasons. An improved junction at Pen Yr Eglwys was required to cater for the additional traffic from the Dyffryn Dowlais development. It would also correct the substandard visibility splay, a benefit arising naturally from the Dyffryn Dowlais development. The correspondence shows that a Dyffryn Dowlais application with Hospital access would have been refused. It is also apparent from development control in 1996 that Council officers drew a distinction between permitting the application which was the subject of the 1989 resolution and permitting a new application with a different access point.

242. With regard to access opposite the Hospital entrance, there was the additional complication of land ownership, i.e. a possible ransom strip held by the Council. To achieve an improved junction this location would require land to the south or south east of the highway fence line. This is significant because the highway works following the deed of exchange with Mr Jenkins in 1968 are all on the north or north western side (the highway side) of the fence. The inference is that this is the boundary of the highway. The land to the south or south western side of it is in the Council's ownership but not part of the highway.

243. The Council dispute this by reference to *Secretary of State for the Environment v Baylis (Gloucester) Limited* (2000) 80 P & CR 324. This decision can be distinguished on the facts and the different wording of the deed. In this reference there has been no dedication of the land on the non-highway side of the fence and the woodland forms no part of the highway. There is no reference in the deed of exchange to section 214(2) of the Highways Act 1959 nor any other statutory power. Furthermore, there is no evidence of a resolution to enter into a deed or accept dedication.

244. A developer requiring access opposite the Hospital would therefore require control of third party land, as at Pen Yr Eglwys. The Council as owners would have been under a statutory duty to obtain the best consideration reasonably obtainable (see section 123(2) of the Local Government Act 1972). This is not the same situation as at Station Road: at the Hospital entrance the 1968 deed was effectively a voluntary conveyance.

245. The decision in *R v Northamptonshire County Council ex p Commission for New Towns* [1991] NPC 109, can be distinguished on the facts and in respect of *Marshall v Blackpool Corporation* [1935] AC 16, also relied upon by the Council, it cannot be said that there was any legitimate expectation of access when the land was conveyed for highway purposes. The Council also rely on *R v Warwickshire County Council ex p Powergen Plc* (1997) 3 PLR 62, but this decision can only apply if the Council can establish that a hypothetical developer would have made a planning application for development with access opposite the Hospital and won an appeal on refusal. Furthermore, this would not have inhibited a ransom payment.

246. On the facts, the Council owned, and a hypothetical purchaser would have thought that it owned, a ransom strip opposite the Hospital entrance. This is a further reason why the reference land would have been considered to be valuable.

247. **Mr Horton** said that development of the Dyffryn Dowlais site was dependent on satisfactory access to the A473 and this could have been opposite the Hospital entrance. The Dyffryn Dowlais development could have had a layout with a link from this access south towards the bypass (as in the 1976 Local Plan).

248. Mr Horton said that the claimants have raised the possibility of a ransom situation opposite the Hospital entrance where the highway authority accepted land in 1968 for road widening. He referred to the deed of exchange under which land was conveyed to be dedicated to, and become part of, the highway. Between 1968 and 1974 works were carried out on the land. An agreement between owner and highway authority could be sufficient evidence of dedication and acceptance of land as part of the highway (see *Baylis*). Thus, under the deed of 1968 there has been dedication of the land conveyed and acceptance by the highway authority.

249. The decision in the *Commission for New Towns* case, that the question whether land is part of the highway is one of fact and that, since the highway works were not carried out on the land, it had not become part of the highway, can be distinguished on the facts. The more recent decision in *Baylis* is to be preferred.

250. If the land subject to the 1968 conveyance did not become part of the highway under the transfer, it did become highway when the widened carriageway and new footway created between 1968 and 1974 began to be used by the public. Use of part of the dedicated land amounts to acceptance of the whole (see *Baylis* at 14). This is also in accordance with the boundary and embankment to be seen on site.

251. If the land transferred in 1968 became part of the highway, it cannot be disputed that the owners of the Dyffryn Dowlais site would have had the right to take access to the highway without payment of ransom (see *Marshall*).

252. Even if the land transferred was not part of the highway at the valuation date, the Council would be prevented from charging a ransom because the 1968 deed created a legitimate expectation in the minds of the Dyffryn Dowlais owners that ownership by the highway

authority would not in itself restrict the rights of the owners to gain access to the highway over the land in the future (see *Commission for New Towns*).

253. If the highway authority could charge a ransom for access there is evidence to show that such a ransom would not be charged (see letter 30 May 1991 from the County Engineer to the solicitors for the owners of Dyffryn Dowlais). The land subject to the 1968 deed was purchased under a compulsory purchase order for highway purposes. There is no reason to suppose that the highway authority would have acted differently than it did in 1991 with regard to land at Station Road.

254. It was suggested in the evidence of Mr Gibbon that the Council might have refused to negotiate opposite the Hospital because they preferred the Pen Yr Eglwys junction. They would have faced insuperable difficulties, particularly if planning permission had been refused and obtained on appeal (see *Powergen*).

255. **Decision** – I look first at the planning position. At the valuation date no planning application had been made for Dyffryn Dowlais with access to the A473 opposite the Hospital entrance and none has subsequently been made. Indications as to the possibility of planning permission with this access can be found in the Local Plan and correspondence.

256. In the Taff Ely Local Plan Deposit Draft 1995, Policy t3.3 (formerly t4.4) stated that the Dyffryn Dowlais link road to the proposed bypass was to be provided as part of a new development scheme. A single access from the A473 is required to serve the Dyffryn Dowlais site and this access road will need to be of a standard to enable it to be extended to serve as a link from the A473 to the bypass (para 8.30). The Proposals Map showed the link road joining the A473 at the Pen Yr Eglwys junction. These were policies and proposals at the valuation date which clearly indicated that access other than at Pen Yr Eglwys would not have been acceptable. I have found that this Plan existed in the no scheme world at the valuation date (as it did in the real world). It would have indicated to a developer of Dyffryn Dowlais that a successful planning application for this site needed access at Pen Yr Eglwys and purchase of the reference land.

257. I look now at the correspondence referred to by the parties. The first letter is dated 14 November 1994 from Barratt to Mid Glamorgan County Council indicating that they propose to access the Dyffryn Dowlais site at The Croft to avoid a ransom situation at the reference land. The response dated 12 December 1994 was not encouraging:-

> "You will be aware that the development of the Duffryn Dowlais site has been the subject of detailed discussions between the developers agents Messrs Keltecs and district and county officers. Whilst I am prepare to consider on a 'WITHOUT PREJUDICE' basis, alternative layouts to those previously discussed and included in a Draft Section 106 Agreement between the parties, I have to advise you that your proposed draft master plan does not fulfil the highway authority's requirements.
>
> You have failed to take on board a rationalisation of junctions on Route A473 and moreover made no attempt to integrate the new development with the county council's proposals to construct a Church Village Bypass and its associated link roads."

258. On 20 September 1995 Barratt wrote again, in connection with a request for an indemnity regarding the compulsory purchase, and said:-

> "The owners are willing to do this but it would help them considerably if you could confirm that an alternative access into these site would be possible from the A473, from say opposite the hospital."

The reply on 2 October 1995 was as follows:-

> "The county council, as highway authority, look for access to any new development to be accommodated at an existing junction which can be adjusted to cater for the additional traffic generated. Of all the possibilities available, the preferred option for access to Duffryn Dowlais coincides with the proposed link road from the A473 to the Church Village Bypass.
>
> The development of Meadow Farm Estate by Ideal Homes allows for this junction, subject to improvements being carried out by the developer, on behalf of the county council, by way of a Section 278 agreement.
>
> If, however, another suitable access exists, then, in principle, it would also be considered on its own merits."

This letter makes two points: the preferred access is at Pen Yr Eglwys but if another suitable access exists it will be considered on its merits.

259. On 1 February 1996 the County Council wrote to Messrs Herbert R Thomas (who were I believe agents to the owners of the Dyffryn Dowlais site):-

> "With reference to your telephone conversation of today's date, I am pleased to confirm that all else being equal, access to this development could be considered opposite to the access to East Glamorgan General Hospital, with an appropriate improvement to the existing junction.
>
> Clearly the highway authority have co-operated in using highway powers to achieve a Compulsory Purchase Order for the above mentioned land because there is a need for traffic signal control at the junction with Meadow Farm Estate and that junction coincides with the link road to the future Church Village Bypass. It was therefore considered good planning practice to incorporate the development traffic control for Dyffryn Dowlais at the same location."

This letter is slightly ambiguous: it does not rule out access opposite the Hospital but does no more than say that it could be considered while repeating the preferred access option at Pen Yr Eglwys junction. It is not clear what the words "all else being equal" mean.

260. Herbert R Thomas wrote on 5 February 1996 referring to the previous letter but asking for a further reply to the proposed Hospital access:-

> "Accepting this, I am wondering if you are in a position to confirm that had it not been for the Church Village Bypass Scheme in the Highway Structure Plan for this area, the

> more appropriate access to the comprehensive residential development around Duffryn Dowlais Farm would then have been in a position in the vicinity opposite the access to the East Glamorgan Hospital.
>
> The owners of the land are quite prepared to cooperate with your Authority in constructing a new junction opposite the Meadow Farm Estate and the first short length of link to the future Church Village By Pass but clearly this has been undertaken to assist in the Highway Schemes of the Authority and can be considered as a form of planning gain."

The produced the last letter in the sequence, dated 27 February 1996 from the County Engineer and Surveyor:-

> "I confirm that had it not been that comprehensive development in the area dictated a particular form of highway layout, then an appropriate location along the frontage with the A473 route would have been considered on its merits.
>
> There can be no question therefore of a ransom situation."

Again, this letter is ambiguous, particularly the reference to "comprehensive development", but it says no more than that another access along the A473 would be considered on its merits.

261. How would a purchaser of the reference land at the valuation date have viewed this correspondence? In my judgment, he would have drawn two conclusions: first, that the preferred access is clearly at Pen Yr Eglwys; second, that another access (particularly at the Hospital entrance) would have been considered on its merits, an action which a local planning authority is bound to take on any planning application. I can find no assurances, express or implied, that access opposite the Hospital entrance would have been acceptable. The situation was, in my view, that a planning application for Dyffryn Dowlais development with access at Pen Yr Eglwys would have been acceptable from the viewpoint of access. Furthermore, the highway authority wished to improve this junction for reasons of safety. This is seen in the Statement of Reason for the compulsory purchase order (which refers to safer access), in the evidence of Mr Iles (on behalf of the Council) at the planning appeal hearing (para 9.7 of his Proof of Evidence where he states that a signal controlled junction "will greatly improve the safety and efficiency of all turning movements from Pen Yr Eglwys") and in a letter dated 16 April 1984 from the County Surveyor which states that the Council were willing to accept less than the standard vision splay at Pen Yr Eglwys. Although an application with access opposite the Hospital would have been considered on its merits, there were no indications that planning permission would have been granted. At best, there was a remote possibility that a Hospital access would have been acceptable. I put it no higher than that.

262. The second matter to be considered concerning the Hospital access is whether there was a potential ransom situation at this location. It is common ground that the construction of an access to the A473 from Dyffryn Dowlais at this point would have required the use of land owned by the highway authority. The issue is whether this land had become part of the highway at the valuation date, and whether the Dyffryn Dowlais developers could have gained access to the A473 without the need to cross or acquire third party (Council) land, or whether they would have needed to acquire land not part of the highway and for which they could have been held to ransom, in a similar fashion to the reference land. It is not for me to determine

this issue definitively but to examine it to see how it would have affected the negotiations and the bid of a purchaser of the reference land in April 1996.

263. The essential questions are: was the land to the south or south east of a fence (i.e. on the Dyffryn Dowlais side of the highway) part of the public highway in April 1996, and, if not, would the highway authority have required the Dyffryn Dowlais owners to pay a ransom value for access or on the purchase of this land to form part of the junction. It is not in dispute that this land was conveyed to the former Glamorgan County Council in March 1968, to be dedicated to form part of the highway and that between 1968 and 1974 works were carried out on part of the land and a fence was erected. I have been referred to four authorities by Mr Horton.

264. In *Marshall v Blackpool Corporation* it was confirmed that the owner of land adjoining a highway has a right of access to that highway from any part of his premises. This right is not in dispute in this reference.

265. In *R Northamptonshire County Council ex p Commission for New Towns* the Commission sold land to the County Council for highway purposes and reserved rights of way over roads to be constructed on the land. They also constructed a ramp on the property to connect to any adjoining roundabout. A road was never built on the land sold. The land became essential access to development land owned by the Commission and for which the Council demanded a ransom payment.

266. It was held that, although there was not a public highway on the land with rights of access reserved to the Commission, they had a legitimate expectation to access to the land for highway purposes without paying a ransom sum. At the time of the conveyance in 1975 it was plain that the Council would build a road to the Commission's land and the roundabout was constructed to enable a road to be built over the land leading to that land. There was no evidence that the parties ever changed their intention to provide a link to the Commission's land. The Commission could legitimately expect that access would be provided on the original terms.

267. This case can be distinguished from the current reference on the facts. There is no evidence that the 1968 deed of exchange was in any way connected with access from the Dyffryn Dowlais site onto the A473. There is no evidence that Mr Jenkins had any expectation that he would be able to connect future residential development on Dyffryn Dowlais to the A473 at this point. As far as I am aware, and certainly on the evidence, Dyffryn Dowlais was first allocated for residential development in the 1976 Local Plan, although this showed the A473 access at the Hospital entrance. I do not think that a purchaser of the reference land in April 1996 would have relied on a legitimate expectation that he would be allowed to access the Dyffryn Dowlais site opposite the Hospital entrance over Council land without ransom.

268. In *R v Warwickshire County Council ex p Powergen Plc* Powergen obtained a planning permission on appeal which required highway works to be carried out before the site could be used. The County Council as highway authority had opposed the grant of planning permission on highway grounds and subsequently refused on the same grounds to enter into a section 278

agreement with Powergen to allow the works to be carried out. These objections had been rejected by the inspector on appeal. The Court of Appeal dismissed an appeal from the decision of the court below that the County Council's refusal to enter into a section 278 agreement was unlawful, unreasonable and perverse.

269. This decision was given after the valuation date but even if it had been known to a purchaser of the reference land, I do not think that it would have reassured him regarding the possibility of ransom at the Hospital access. He would have known that, if he obtained planning permission on appeal for development of the Dyffryn Dowlais site with this access, the Council could not have refused to enter into a section 278 agreement to allow him to carry out the junction improvement works. But the question of ransom would still have remained if some Council land was needed for the works. I do not think that a purchaser of the reference land would have seen *Powergen* as of assistance in combating such a demand.

270. Finally, I was referred to *Secretary of State for the Environment, Transport and the Regions v Baylis (Gloucester) Limited*. This decision was also given after the valuation date and would not have been known to a purchaser of the reference land in April 1996. As far as the issues in this reference are concerned, however, it appears to be essentially a restatement of the existing law. The relevant issue in *Baylis* was whether land adjoining a highway had become part of that highway under a memorandum of agreement dated 17 January 1964.

271. The Deputy Judge (Kim Lewison QC) said that under the common law the existence of a public highway could only be established by proving dedication by the owner and acceptance by the public. The modern law of highways began with the Highways Act 1835. This did not abolish the twin requirements of dedication and acceptance but introduced a second stage, adoption, before a highway became maintainable at public expense. This remains the position today (at 328).

272. He considered the agreement of January 1964, the works carried out on the land and the relevant statutory provisions, and reached two conclusions. The first was that the agreement amounted to a dedication of the disputed strip as a highway maintainable at public expense. The second was that the dedication had been accepted, either by the memorandum itself or by subsequent public use of part of the disputed land and/or the activities of the highway authority (including mowing the grass on the land twice a year) (at 340).

273. If this decision had been known to a purchaser of the reference land in April 1996 it might have given him some encouragement to think that the whole of the land conveyed by Mr Jenkins in March 1968 had become part of the public highway and that therefore a ransom situation could not arise. Access to the A473 could be taken from the Dyffryn Dowlais site as of right (see *Marshall*).

274. Looking at the matter objectively, however, which it should be assumed would have been the approach of a purchaser of the reference land asked to pay a large sum in ransom or key value, the position at the Hospital entrance was not the same as in *Baylis*. The agreement in that case stated that the owners "hereby forthwith give up and dedicate to the public" the land "for the purpose of improving the highway" to the intent that the land "shall be added to and

form part of the highway." Under the agreement the County Council agreed to carry out highway works but these were never executed. The Deputy Judge placed emphasis on the words "hereby forthwith … dedicate" which he said indicated an intention to dedicate immediately. Although the agreement contemplated that works would be carried out in the future there was no link between that obligation and dedication, except to the extent that the works were part of the consideration for the dedication (at 329). The deed of 29 March 1968 in this reference, however, had different wording. The woodland was conveyed "to the intent that the same may henceforth be dedicated." In my judgment, the use of the word "may" (and not "shall") casts doubt on any intention to be an immediate dedication or acceptance under the deed (as in *Baylis*).

275. As to acceptance by works or public use at the Hospital entrance, it is agreed that the works were carried out on part of the woodland conveyed. Works on the north or north western side of the fence erected were clearly highway works and this land has become part of the public highway. There is, however, no agreement as to whether works were carried out on the south eastern (or Dyffryn Dowlais) side of the fence. This land is clearly part of the land conveyed (and now owned by the Council) but it is in dispute whether it has become part of the highway. There is no evidence of public use of this part of the land.

276. Highway works were carried out between 1968 and 1974 on part of the land conveyed. If those works could amount to acceptance of dedication on part of the land, the question is whether the use of part of dedicated land can amount to acceptance of the whole? In *Baylis* the Deputy Judge, basing his decision on *Tottenham Urban District Council v Rowley* [1912] 2 Ch 633, decided that it could. It may well have been therefore that the works on the clearly defined area adjoining the highway opposite the Hospital entrance operated as acceptance of dedication of the whole of the land. There is, however, no resolution or documentary evidence (at least none was put before me), that the Council believed the land to the south east of the highway fence line had become part of the public highway.

277. The matter is not, and was not in April 1996, clear. The Dyffryn Dowlais owners may have been able to gain access to the A473 opposite the Hospital entrance as of right (subject of course to planning permission) but, conversely, they may have been faced with a claim by the Council that they owned a ransom strip. This may have arisen due to their opposition to access at this point on planning grounds. I cannot accept that the Council would have waived any right to a ransom payment if one could be substantiated. Local authorities are always in need of extra funds; I accept Mr Nardecchia's submission that the Council were under a statutory duty to obtain a consideration not less than the best that can reasonably be obtained (see section 123(2) of the Local Government Act 1972).

278. Overall, the position in April 1996 regarding access was as follows. The Council's favoured location for access from the Dyffryn Dowlais site on to the A473 was at the Pen Yr Eglwys junction. There was no likelihood that access opposite The Croft would be permitted. There was a remote possibility that access opposite the Hospital entrance would be permitted. I cannot find that it should be entirely eliminated; it would be considered on its merits; but no more encouragement than this had been given. It would have been contrary to planning policies to allow an access to the Dyffryn Dowlais site at this point. There may have been a ransom situation at the Hospital entrance. If the Council could show that not all of the land

conveyed in March 1968 had become part of the public highway, they would have owned land outside the highway which formed the key to junction improvement works at this point and, having regard to their statutory duty, would have sought a ransom payment. If the decision in *Baylis* had been known at the valuation date the purchasers of the reference land may have been encouraged to think that they could rebut a demand for ransom.

279. In these circumstances, the final question is what proportion of uplift would a purchaser of the reference land have paid, 33% as suggested by Mr Llywelyn (on the assumption that the Hospital access was available) or 50% as suggested by Mr Gibbon (on the assumption that no other access than Pen Yr Eglwys was ever considered or would receive consent), or a figure within this bracket? Clearly, the chances of obtaining planning permission for Dyffryn Dowlais with access to the A473 opposite the Hospital entrance were poor and the percentage should therefore be at or close to Mr Gibbon's figure. I have found that there was a remote possibility that access opposite the Hospital would have been allowed at the valuation date and that a ransom at this point might have been resisted. I adopt 45% of the uplift in the value of the Dyffryn Dowlais site as attributable to the reference land. This gives the land a value of £1,139,030, say £1,139,000.

280. My valuation is as follows:-

	£	£
Dyffryn Dowlais site		
Residential: 32.92 acres		
@ £230,000 per acre		7,571,600
Public house site: 1.73 acres		
@ £145,000 per acre		250,850
		7,822,450
Less: 11.25% for quantum		880,026
		6,942,424
Less: for lack of planning		
permission, 10%	694,242	
Less: abnormal costs	3,442,000	4,136,242
Value of Dyffryn Dowlais site		2,806,182
Less: existing use value		275,000
Increase in value		£2,531,182
Reference land		
Allocate 45% of increase in value of Dyffryn		
Dowlais site to reference land, 45% of £2,531,182 =		£1,139,032
Value of land, say		£1,139,000

281. I determine that the market value of the freehold interest in the reference land under section 5(2) of the Land Compensation Act 1961 as at 27 April 1996 was £1,139,000 (one million and one hundred and thirty-nine thousand pounds). This is the compensation payable to the claimants for the compulsory acquisition of this land.

282. This decision determines the substantive issues in this reference. It will take effect as a decision for the purposes of an appeal when the outstanding issue of costs has been determined. The parties are invited to make submissions as to the costs of this reference and a letter accompanying this decision sets out the procedure for representations in writing.

Dated 28 September 2004

(Signed) P H Clarke

ADDENDUM

283. I have received written submissions on costs. The claimants seek their costs on the grounds that they are the successful party and the sum awarded is greatly in excess of two sealed offers made by the Council. They ask for their additional costs as a result of the Council's failure to lodge a skeleton argument until after the start of the hearing to be on the indemnity basis. The Council do not dispute that costs should normally follow the event but ask that there should be a proportionate reduction in the costs award because the original claim was approximately £2.3m compared to the compensation determined at about £1.1m. This was a genuine dispute and the Council did not act unreasonably.

284. I agree with the claimants that they should receive all their costs. The general rule is that a claimant whose land has been compulsorily acquired and who is successful in obtaining an award of compensation above an unconditional offer should receive his costs in the absence of some special reason to the contrary (*Purfleet Farms Limited v Secretary of State for the Environment, Transport and the Regions* [2003] 1 P & CR 324). The claimants have been awarded compensation reasonably close to the figure they put forward at the hearing and greatly in excess of two offers by the Council. I cannot accept that the difference between the original claim and the award (or the sum put forward at the hearing) is a special reason for depriving the claimants of part of their costs. The figure spoken to by Mr Gibbon at the hearing was included in his expert report served on the Council in April 2003, a year before the hearing. I cannot accept that the Council were prejudiced or incurred additional or wasted costs due the revision of the original claim.

285. I also agree that the claimants should receive on the indemnity basis any wasted or additional costs incurred in consequence of the Council's failure to provide a skeleton argument before the hearing. On 31 May 2002 I issued a direction that skeleton arguments shall be exchanged and lodged seven days before the hearing. The hearing dates were fixed in December 2003. No skeleton was lodged on behalf of the Council by the start of the hearing. Mr Nardecchia helpfully agreed to continue but on the second day, during Mr Horton's cross examination of the claimants' first witness, it became clear that the lack of a skeleton was

creating difficulties for the witness, the claimants and the Tribunal. The Council's case, of some complexity, was largely emerging in questions put in cross examination. With the agreement of both counsel I adjourned the hearing to allow the missing skeleton to be lodged: promised for what would have been day three of the hearing but eventually lodged late in the afternoon of the next day. Effectively two days of the hearing were lost due to the Council's failure to comply with the direction of May 2002. I was told by Mr Horton that he was not fully instructed until 8 April, only 11 days before the start of the three week hearing with Easter intervening. In these circumstances I can see no reason why the claimants should not recover any wasted or additional costs on the indemnity basis due to the Council's default.

286. Accordingly, I order the Council to pay the claimants' costs of this reference, such costs, if not agreed, to be the subject of a detailed assessment by the Registrar of the Lands Tribunal on the standard basis, save for any wasted or additional costs incurred by the claimants in consequence of the Council's failure to serve a skeleton argument and list of cases not less than seven days before the hearing, which costs (unless agreed) shall be assessed on the indemnity basis.

Dated 10 November 2004

(Signed) P H Clarke

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – land for road widening – access to waste disposal tip – ransom value – residual valuation method rejected – compensation of £660,000 awarded to the four claimant parties

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

H A SNOOK (1) M L SNOOK (2) R H SNOOK (3)

Claimants

A G SNOOK & Mrs J A PETHERHAM (4)

and

SOMERSET COUNTY COUNCIL Acquiring authority

Re: Land at Dimmer Lane, Castle Cary, Somerset

Before The President and P R Francis FRICS

Sitting at 48/49 Chancery Lane, London, WC2A 1JR
on
1-3, 6-9 and 17 October 2003

Alun Alesbury instructed by Bircham Dyson Bell for the claimants
Michael Humphries QC instructed by Somerset County Council Legal Services for the acquiring authority.

The following cases are referred to in this decision:

Stokes v Cambridge Corpn (1961) 13 P & CR 77
Blue Circle Industries Plc v West Midlands County Council [1989] RVR 34

Haddon v Black Country Development Corporation [1993] RVR 93
Clinker and Ash Ltd v Southern Gas Board (1967) 18 P & CR 372,
Batchelor v Kent County Council (1988) P & CR 320, (1989) 59 P & CR 357, (1991) 31 RVR 329
Wards Construction (Medway) Ltd v Barclays Bank plc (1994) 68 P & CR 391

DECISION

Introduction

1. These claims for compensation arise out of the compulsory purchase of land for highway improvements by Somerset County Council pursuant to the County of Somerset (Dimmer Lane) Compulsory Purchase Order 1998. The claimants in the references that we have to determine are respectively Mr H A Snook, Mr M L Snook, Mr R H Snook, and (jointly) Mr G A Snook and Mrs J A Petherham. These references were consolidated and the claimants have acted as a single group, although the claims relate to parcels of land in the respective ownership of the four claimant parties. We refer to them collectively as the Snooks. The CPO also gave rise to claims by two other parties, Mr R H Targett and Mrs E N Targett (the Targetts) and Miss A M Lee. These other claims were due to be heard with the Snooks claims but in the event they were settled shortly before the hearing.

2. The CPO was promoted in order to enable the carrying out of highway improvements to Dimmer Lane, Castle Cary, which provides access to a waste disposal tip, Dimmer Tip. At the time of the CPO Dimmer Tip was owned and operated by Wyvern Waste Services (Wyvern), a Local Authority Waste Disposal Company (LAWDC) wholly owned by the county council. In 1991 planning permission had been given for a major extension of the tip. It was subject to a Grampian condition, condition 2, requiring the carrying out of improvements to Dimmer Lane in accordance with specified plans. The improvements for which the CPO was promoted differed in some respects from those shown in the plans but there was recognition on the part of all concerned that they would in practice satisfy condition 2. As a consequence the claimants claim that their land has a substantial ransom value. The council accept that the land had a ransom value but they dispute the quantum of that ransom. They say that Dimmer Lane would have needed widening even in the absence of the tip extension, and they say that this and the availability of an alternative scheme (the one-way "Parker loop") would have diminished the ransom payment.

3. The parties were able to agree that those from whom it was essential to acquire land in order to implement the scheme were the Snooks, the Targetts and the council itself, as the owner of a smallholding adjacent to Dimmer Lane. They also agreed how the overall ransom sum should be apportioned: 60% to the Snooks, 20% to the Targetts, and 20% to the council. The percentages attributable to the individual Snook ownerships were also agreed. The Lee claim was settled on the basis of Miss Lee having no ransom claim.

4. In dispute between the parties were the value to be placed on the ability to satisfy condition 2 and the proportion of this value that should be treated as constituting the overall ransom sum. The claimants said that the development value of the tip under the 1991 planning permission as at the agreed valuation date (23 September 1999) was £8,400,000; the council said it was £828,000. The claimants' valuer based himself on a residual valuation; the council's valuer relied principally on a valuation based on comparables. They agreed that the development value of the tip represented the value of the ability to discharge condition 2. The claimants said that the overall ransom sum was 50% of the development value; the council said that it was 30%. The result is that on the claimants' approach the amount to be divided between the Snook interests would be £2,520,000, while on the basis of Somerset's it would be £149,040.

5. We issued a decision in this case on 9 February 2004 and said that it would only become final when the question of costs had been determined. The acquiring authority then wrote to the Registrar raising certain points on the section of the decision headed "Development value: comparables". In the light of this we invited both parties to make representations on the points raised by the acquiring authority, and we received these between 12 and 25 March 2004. We concluded, having considered these representations, that certain amendments could usefully be made to that section for the purpose of clarification and that there was a need to correct a minor error. Since the decision we had issued had not taken effect, we have incorporated these amendments, and additional consequential amendments, in the text of this decision.

Facts

6. The parties produced a statement of agreed facts and issues from which, together with the evidence and our inspection of the subject land, Dimmer Tip, and the surrounding area on 29 September 2003, we find the following facts. The CPO land comprised narrow of strips of agricultural land, hedges and lane margins abutting Dimmer Lane for a length of about 1,000 metres between the B3153 to the north and, to the south, its junction with Camp Road (a private road within the ownership of the tip operators and giving access to the site). The tip, on land that had formerly been a military camp, has been used as a landfill site since 1970. The original area of about 74 acres included, in addition to the tip itself, offices, workshops, a composting site, a weighbridge and recycling facilities, together with an animal carcass incinerator. It had been operated by the council since 1974, but in 1992, as a result of the requirements of the Environmental Protection Act 1990, the site was transferred to Wyvern, an arms-length company wholly owned by the council.

7. In 1991 the council applied for and received deemed planning consent (dated 17 September 1991) for development described as "Alterations and extensions to existing landfill site, landscaping, screening and improvements to existing access thereto at Dimmer Landfill Site, Dimmer, Castle Cary". It permitted a substantial lateral extension of approximately 128 acres (of which 121 acres was to be operational and the remainder was to contain a leachate treatment works) onto greenfield land to the west. The permission was subject to conditions relating to leachate treatment, archaeology, land drainage, site restoration and operational restrictions. Condition 2 provided:

> "Before any tipping takes place on the site hereby permitted, the highway improvements shown on drawings J/175/19/0, J/175/20/0 and J/175/21/0 shall be completed and open to traffic."

The drawings showed a widening of Dimmer Lane from an existing width of between 2.9 and 5.0 metres to a 6 metre carriageway, over a length of approximately 1 kilometre between the B3153 and Camp Road, together with junction improvements at either end. Following unsuccessful attempts to acquire the land necessary for this widening (thought then to be just the hedgerows and strips of the field edges), in 1994 the council developed an alternative scheme (the Rust Report Scheme) which allowed for a narrower carriageway (5.5 metres) with passing places and, over a 100 metre section, one-way traffic light control. This could have been accommodated between the hedges but would have incorporated the then existing grass verges. The proposals, which were unpopular, were in any event found to be unworkable as, following a challenge by the Snooks, it was established by April 1997 that the council did not own the highway verges but that the claimants (and the Targetts and Miss Lee) did. The overall extent of the land (some 8,790 sq m) that was required to facilitate widening was in the ownership of six parties, including the claimants in this reference, whose land frontages extended to about

720 metres of the 1,000 metres to be widened. Ownership of the highway verges having been established, the Snooks constructed tyre walls along their verges, to prevent traffic encroaching onto them.

8. In order, therefore, to implement the required road improvement scheme (an application under section 73 to implement the 1991 consent without complying with condition 2 having been withdrawn), the council made the CPO and an inquiry into objections to it was held in September 1998. The order was promoted to enable the widening of the carriageway to a minimum of 5.5 metres, with 7 metre wide passing places and a 9 metre section at the bend immediately prior to the junction with Camp Road. At the inquiry the council in its statement of case said it considered that "Dimmer Lane is patently inadequate for the traffic using it and has been for some considerable time. Its inadequacies are giving rise to traffic conditions that can no longer be tolerated and to extensive encroachment on verges that the council has now recognised as being outside highway limits causing alleged damage to property". In his decision letter the inspector commented that "I am in no doubt that the County Council has a duty to make Dimmer Lane suitable for the ordinary traffic now using it" and "I accept the generally held view that something needs to be done now." The CPO was confirmed on 11 January 1999. Notices to treat and notices of entry were served on 6 September 1999, and entry was made on 23 September 1999. That date is the valuation date for the purposes of this reference.

9. It was agreed that the valuation falls to be assessed by arriving at the open market value of the extension land as enhanced by the ability to satisfy condition 2 at the date of entry, less the current use value of the land, which is agreed to be £327,000 (£2,531 per acre). The share of any ransom value, under the principle in *Stokes v Cambridge Corpn* (1961) 13 P & CR 77, attributable to the Snooks is 60% with the individual percentage shares between the parties split as to H A Snook 18%; M L Snook 16%; R H Snook 16% and G A Snook and J A Petheram 10%.

10. At the valuation date, Wyvern owned the whole of the existing tip and the extension land, with the exception of a small area in the middle of the extension land that was owned by the Blackmoor Vale Hunt. They subsequently acquired this land. They had acquired 94.27 acres of agricultural land forming part of the extension area from the Trott family on 12 July 1996. The consideration was £675,000 plus a transfer to the Trott family of additional agricultural land. Also in 1996 7.48 acres of land, required for the leachate treatment works, was acquired from a Mr Boyer for approximately £9,550 per acre.

11. At the valuation date Wyvern operated three other landfill sites within the county, namely Williton, Poole and Walpole Drove tips. Inputs into the Dimmer Tip in the years preceding the date at which tipping on the extension land began were:

1993/94	95,575 tes
1994/95	93,776 tes
1995/96	123,676 tes
1996/97	142,508 tes
1997/98	133,705 tes
1998/99	178,075 tes
1999/2000	199,932 tes

2000/01 190,758 tes

Wyvern's principal customer was Somerset County Council, under a 10 year contract made in 1992. This contract was extended 12 days after the valuation date, on 6 October 1999, for a further 5 years. The fact the contract had not been formally renewed at the valuation date had no impact upon the value of the land and there was no reason to suppose that the contract would not be renewed again or further extended prior to its expiry in August 2007. Tipping on the extension land commenced in November 2001 following the construction of the necessary cells and infrastructure in accordance with the requirements of the Waste Management Licence and environmental objectives at a cost of approximately £1.6 million**.**

Claimants' valuation

12. For the claimant Mr Alun Alesbury called Andrew Philip Sedgley Crawford MRICS. Mr Crawford is a chartered surveyor in practice on his own account and for the past 15 years has specialised in valuation, compensation and planning matters on mineral and waste management company properties throughout the UK and overseas. He is chairman of the Minerals and Waste Management Faculty of the RICS and is also a member of the Institute of Quarrying.

13. Mr Crawford adopted a residual valuation. He rejected the approach of the council's valuer, which relied on prices paid for land for parts of landfill sites. Such prices did not reflect the true value of such land to the operator. In reality, he said, that value would be very much higher than the sum of the constituent parts (or building blocks) being acquired in the land assembly process. He said that this was exactly the same as an office block built on a piece of land having a higher value than the land upon which it sits. He noted two Lands Tribunal cases in particular (*Blue Circle Industries Plc v West Midlands County Council* [1989] RVR 34 and *Haddon v Black Country Development Corporation* [1993] RVR 93) which, he said, established support for the valuation of such a facility on the basis of profits derived from potential revenue and costs. Mr Crawford's valuation is set out in Appendix 1. An appropriate percentage of the value so obtained was then to be taken as the amount of the ransom that would have to be paid to the landowner whose land held the key to the realisation of that value.

14. We will note later the parameters on which Mr Crawford based his valuation. Taking account of the capacity of the tip, the annual inputs in tonnes and the average profit per tonne and allowing for interest, the valuation gave a present value of £12,906,901, from which Mr Crawford deducted 30% in accordance with *Haddon* to reflect risk. He then deducted from the result (£9,034,831) an amount to reflect the prospective cost of acquiring the small part of the extension land that at the valuation date was in the ownership of the Blackmoor Vale Hunt. This gave as the value that would be released by the construction of the widened highway access £8,750,000. From this there had to be deducted the agricultural value of the extension land, and the net development value then became £8,400,000.

15. As far as the ransom percentage was concerned Mr Crawford said that the claimants were in such a strong bargaining position that they could demand a ransom share of at least 50%. Without the road widening, the tip could not be operated in accordance with the 1991 permission, which extended to the whole site, including some over-tipping on the existing landfill area. With the tip being virtually full at the valuation date of 23

September 1999, it would be necessary to implement the permission straightaway, even though it was an agreed fact that tipping in the extension land did not commence until 2001. Apart from the ongoing negotiations for the acquisition of the Hunt land, a small and far from critical proportion of the extension land, all the extension land had been acquired and the development could proceed. Other sites in Somerset were rapidly filling up and due to close, and with the demand for space continuing unabated, the importance of getting the extension land ready for the acceptance of waste could not, he said, be overstated. As the Parker loop scheme was unworkable and there were no other viable alternatives for creating a satisfactory access to the extended tip, there could be no question as to the strength of the ransomers' position, and that must be reflected in the proportion of the profits that the prospective, or hypothetical, purchaser would be prepared to pay. Taking, therefore, 50% of the net development value of the tip gave an amount of £4,200,000, to which the agreed percentage shares of the Snook interests fell to be applied.

Acquiring authority's valuation

16. For the council Mr Michael Humphries QC called David Thaddeus FRICS, a chartered surveyor and a partner in Matthews & Son of London WC1. He has over 20 years experience in the profession and holds a diploma in minerals surveying. He specialises in the valuation of minerals and waste management properties.

17. Mr Thaddeus said that, on the basis that it was acknowledged that in the circumstances of this case the claimants would be entitled to a share of any ransom value attaching to the land, he had been instructed to provide a valuation of the extension land only. On advice he treated condition 2 of the 1991 planning permission as applying only to the extension land. Although the permission was initially implemented in 1996 with the start of preparatory works (including the diversion of Back Brook), tipping did not actually begin on the extension land until November 2001. Thus, he thought, condition 2 only took effect on that date, and it was necessary, therefore, for any value of the extension land at the valuation date to be deferred. Mr Thaddeus said that in his opinion there would need to be, in addition to that 2 year deferment, a further 9 months before the full value could be realised and any profits started to flow, because of the time it would take for the stipulations required by the waste management licence to be implemented.

18. Mr Thaddeus provided valuations on four different bases. His first approach, and that upon which the council principally relied, was by reference to land transactions both in connection with the site assembly of the extension land and elsewhere in the county. He said that the valuation of landfill sites and other wasting assets was essentially similar to the valuation of other land in that it consisted of the analysis of open market transactions, and the application of that evidence to the subject property. In his view, the acquisition of the Trott land, at £9,575 per acre almost 3 years before the valuation date, provided an excellent comparable and gave a very reliable indication of the value, on a per acre basis, of the extension land. That land comprised 94.27 acres of agricultural land, all of which lay in the consented area. The consideration was £675,000 plus a transfer to the Trotts of several parcels of land in the ownership of the council valued by the parties to the transaction at £225,000, making a total of £900,000. Both parties, he said, had been professionally represented by chartered surveyors, and there had, in his view, been little movement in land values in the 2 years and 10 months between the date of that transaction and the valuation date.

19. The acquisition of three parcels of land in connection with the proposed extension of the council's Walpole Drove site (which was operated in a very similar way to Dimmer Tip and was also a land-raising, rather than land-filling, site) provided further support. The parcels ranged from 4.42 to 39.63 acres and the acquisitions, at dates close to the valuation date, were at agricultural land values with an uplift on the grant of planning permission. The agreements analysed at between £7,000 and £7,250 per acre. Taken with the Trott transaction these comparables provided, Mr Thaddeus said, a weight of evidence in support of values between £7,000 and £10,000 per acre, and he adopted a figure of £9,550 to give a value for the 121.03 acres acquired for the extension land of £1,155,836 – say £1,155,000. He said that he derived further support from a without prejudice offer made by agents for the Snook family on 21 August 1995 to sell their interests for a consideration consisting of an initial payment, an annual payment and royalties. This analysed, said Mr Thaddeus, at £154,908; and, brought to September 1999 values, and assuming an overall ransom value of 25% and the Snook family's 60% share of this, it gave a value for the extension land of £1,140,000.

20. Mr Thaddeus's second valuation, on a residual basis, amounted to £1,133,000. We set this out in Appendix 2. It comprised a capitalisation of the anticipated annual profit achievable from the extension land derived from an analysis of Wyvern's management accounts. Mr Thaddeus explained the inputs that he had used (which we consider in more detail below) and in this version he had adopted an all-in yield of 24% and no end allowance.

21. His third valuation (see Appendix 3), using the same inputs as the second, adopted the approach used in *Haddon*, by taking a lower initial yield (of 13%) and including an end allowance for risk of 50 per cent. This valuation amounted to £1,115,000 and was, he said, equivalent to a 24% yield where no end allowance was used. Mr Thaddeus's fourth valuation (using the received basis for total extinguishment valuations) simply used a multiplier of 2.5 times projected annual profits and was £1,100,000.

22. Valuation evidence on the ransom percentage was given by Colin Smith FRICS IRRV, a chartered surveyor with 30 years experience in compulsory purchase and compensation matters and a partner in Bruton Knowles based in Gloucester. In producing his report, which dealt specifically with the issue of ransom percentages, he said he had seen, and relied upon, the waste disposal site valuation produced by Mr Thaddeus and the highways report produced by Mr Parker. Applying the principle in *Stokes v Cambridge* he said that the amount of the enhanced value that Wyvern would be prepared to pay would be between 25 and 50 per cent, depending upon its perception of the problem.

23. Mr Smith said that by the valuation date it had become abundantly clear that the general situation in Dimmer Lane had become intolerable and that it was inevitable that the council, as highway authority, would have to do something to improve matters. As a result, in the no-scheme world, the value to Wyvern of the land required for the road widening would have decreased in direct proportion to their perception of the likelihood that, acting as highway authority, the council would have to take responsibility for the road widening. In other words they would temper the percentage that they were prepared to offer to reflect the certainty that, if they waited, the council would solve the problem for them.

24. Mr Smith also said that whilst he accepted that the Parker loop was not a viable solution in the long term, if the percentage demanded by the claimants was so high that the potential profitability of the extension land was called into question, Wyvern would walk away from the negotiations and would have to find another solution. However, on the hypothesis that a deal was to be done, he said in his report that a 25% ransom percentage

was appropriate. Following later meetings between the experts, including the valuer acting for the Targetts, he amended that opinion to 30%. On the basis of Mr Thaddeus's principal valuation at £1,155,000, less the agreed existing use value of the extension land, £327,000, the sum that represented 30% of the increase in value was £248,400. This sum then fell to be divided between the claimants in the proportions that had been agreed with their valuers.

Issues

25. The issues between the parties are these:

(a) Condition 2. Whether, properly interpreted, this required that the highway improvements be completed before any tipping under the 1991 permission took place or whether it was only tipping on the extension land that had to await the completion of the works; and, if the former, the likelihood of enforcement action being taken against tipping on the existing tip under the 1991 permission.

(b) Valuation method. Whether the development value of the extension land is properly to be assessed by reference to comparable transactions or by a residual valuation based on prospective profits.

(c) Development value: comparables. If development value is to be assessed by reference to comparables, how the comparable evidence is properly to be used and the value that results from its use.

(d) Development value: residual method. The inputs into such a valuation and the value derived from them.

(e) Highways. Whether, in the absence of the scheme, the highway authority would have carried out the improvement to Dimmer Lane; and whether the Parker loop would have been seen by the parties as a potential alternative.

(f) Ransom percentage. The proportion of the net development value attributable to the interests of those whose land was essential to the Dimmer Lane improvement.

We will take these issues in turn.

Condition 2

26. Condition 2 of the 1991 planning permission, as we have already noted, required that the Dimmer Lane highway improvement must be completed and open to traffic "Before any tipping takes place on the site hereby permitted." The permission permitted tipping to take place on an area of 121 acres adjoining the existing tip, but it also permitted additional tipping to take place on the existing tip itself. Condition 9 provided that: "The final contours of the site hereby permitted shall accord entirely with those shown on drawing J/175/15/0;" and the drawing shows in section, identified

by hatching, additional tipping on the existing site. The claimants contend that condition 2 applies to both the extension area and to the existing tip. The council say that, properly construed, the condition only applies to the extension area, and that, even if that is wrong, the planning authority would not have taken enforcement action to prevent tipping continuing on the existing tip before the completion of the Dimmer Lane improvement.

27. The significance of the issue is that at the date of valuation very little void space on the existing tip was left to Wyvern. Calculations put to Mr Thaddeus in cross-examination showed that there was probably sufficient for 120,000 tes at the beginning of July 1999 (which appears to us to be the date, rather than the beginning of April, by reference to which annual calculations were made). If Wyvern would have had to satisfy condition 2 before tipping on the existing tip under the 1991 permission, they would evidently have needed urgently to acquire the subject land at the valuation date, September 1999. On the other hand, if they could continue tipping on the existing tip, by implementing the 1991 permission in advance of the Dimmer Road improvement, the pressure on them would be less. Mr Thaddeus estimated that void space for 230,000 tes was available on the existing tip under the 1993 permission; and in any event it is agreed that tipping on the extension area did not start until November 2001. Mr Thaddeus therefore made an allowance for deferment in calculating the value of the 1991 permission that was dependent on the satisfaction of condition 2.

28. In our judgment the construction put on condition 2 by the claimants is the right one. The reference to "the site hereby permitted" is a reference to both the existing tip and the extension area. The permission was for development consisting of "Alterations and extensions to existing landfill site." Condition 9, which dictated the final contours of "the site hereby permitted" clearly relates to both the existing tip and the extended area. Condition 7, which deals with hours of tipping on "the site hereby permitted" must also relate to the totality of the site. The same goes for Condition 10, dealing with the restoration and after-use of "the site".

29. Having said this, we can see that it may have been, or may principally have been, the concern of the council that the Dimmer Lane improvement should be open to traffic before the extension area was started. There are certain other conditions (for example, condition 4, dealing with the diversion of the Back Brook) which appear to be specifically concerned with the extension area, even though they bite on "the development" or "the site". In our view, it is unlikely that the council would have been concerned to enforce condition 2 in relation to the existing site. Moreover, enforcement proceedings would inevitably have been uncertain in their outcome, and, in view of the time that they would take to complete and the short period of tipping on the existing tip, it is unlikely, we think, that the council would have taken enforcement action in relation to the existing tip. Finally, it is in the highest degree unlikely in our view that the planning authority would have served a stop notice, in the light of the argument on the construction of the condition, since failure on this point would have made them liable to pay compensation. With all these considerations in mind we think that in the hypothetical negotiations both parties would have discounted the possibility that the council might seek to enforce condition 2 before tipping started on the extension area. Nevertheless it is also the case that, on Mr Thaddeus's figures, there was only about 18 months' of void space still available on the existing tip at an annual tipping rate of 200,000 tes. Given the need to complete the works, we think that both parties would in reality have approached the negotiations as though Wyvern's need was immediate.

Valuation method

30. The Tribunal has made clear on a number of occasions that in valuing land for the purposes of assessing compensation a valuation based on the residual method, or one that is derived from an assessment of the profitability of the land, is only to be adopted in the absence of some more reliable method. The reason for this (see the classical explanation by Mr R C Walmsley FRICS in *Clinker and Ash Ltd v Southern Gas Board* (1967) 18 P & CR 372 at 377-379) is that, in contrast to the situation where the method is used by a vendor or a purchaser in prospect of an actual transaction, there is no external sanction facing the valuer who, for the purposes of an arbitration, produces what is a calculation of potential profit made in vacuo. The potentially wide range of plausible assumptions that may be made as to the inputs in such a valuation and the wide variations in the final result that quite small differences in these assumptions may make means that it is in general an unreliable valuation method. In the present case the proportionate difference between the parties' assessments of the net development value of the extension land is not untypical. The claimant's figure is £8,400,000; the council's is £806,000 (Mr Thaddeus's valuation 2, £1,133,000, minus existing use value, £327,000). Evidence of comparable transactions will thus always be preferred where it can be used, through the exercise of valuation judgment, to reach the value of the land in question.

31. Both valuers seek, as the first step in the valuation of the claimants' interests, to establish the net development value of the extension land. In July 1996, for the purpose of bringing the whole of this land into their ownership, Wyvern purchased 94.27 acres of it from the Trotts. As we shall say, the price paid for this land in the circumstances in which it was bought appears to us to constitute good evidence from which the net development value of the extension land at the valuation date can be derived. Without the Trott land no tipping on the extension land could have taken place, and there was no other land which, as at July 1996, was essential for this purpose. There is, in our judgment, therefore, no need to resort to a valuation based on an assessment of the potential profitability of the land.

Development value: comparables

32. We agree with Mr Thaddeus that the Trott transaction is an excellent comparable. From it (as well as other transactions, to which we will refer) he derived a price per acre which he then applied to the total area of the extension land. We disagree with this way in which he uses the comparable evidence. We can see no reason why the amount per acre paid for the Trott land should be taken as representing the value per acre of the extension land as a whole. The negotiations between Wyvern and the Trotts in July 1996 were between one party, Wyvern, that owned the existing tip and 25 acres of the extension land and another party, the Trotts, who owned all the rest of the extension land that was essential if the tipping was to take place. It was envisaged at that time that the Dimmer Lane problem would be solved by the highway authority (as Mr Crawford, cross-examined by Mr Humphries, accepted). The Boyer land (7.28 acres) was to be acquired for the leachate treatment works, but there is nothing to suggest that this was the only land on which a leachate works could have been sited so that, in consequence, the land was vital to the tip extension. The price later agreed for it confirms this. The Hunt land (1.295 acres) was not vital for the extension development. Failure to acquire it would simply result in the loss of tipping volume (165,000 tes according to Mr Crawford, 330,000 tes according to Mr Thaddeus). The Trott land, however, was vital to Wyvern if the extension land was to be developed.

33. We do not regard the total area of the Trott land required by Wyvern nor the amount of land owned by Wyvern in addition to the existing tip to be a matter of much significance in view of the negotiating position of the parties. What mattered was on the one hand, that the Trott land could only be developed as an extension of the existing tip, and on the other hand, that, without the Trott land, none of the extension land could be developed and that no ransom situation arose in relation to either the Boyer land or the Hunt land. In such a situation, in this marriage value negotiation, what proportion of the total development value that was in practice dependent on the satisfaction of condition 2 was attributable to the Trott land? We think that the important factors in July 1996 were these. The only possible purchaser of the land at that date was Wyvern, who needed it for the extension of their existing tip. The need for Wyvern to use the extension land was still, however, a number of years away, and any price agreed would have to take account of this deferment of the realisation of the development value. In addition the parties would have recognised that Wyvern, operating as it did other tips as well, had at that stage a significant degree of control over when tipping on the extension land should start. There were moreover uncertainties about the rate of tipping of which the parties, well informed as they were, would have been aware. In July 1992 the Poyntz Wright calculations of annual tipping volumes had assumed that Dulcote tip would close in mid-1993 (so that Dimmer volumes would increase from 43,000 cu m to 88,000 cu m in the year 1993-4) and that Odcombe tip would close in mid-1995, increasing the Dimmer volume to 160,000 cu m in 1995-6. In the event Dulcote did not close until 1997, and Odcombe closed in 1994. In the year to July 1996 the tipped volume was not the 160,000 cu m, 176,000 tes, previously anticipated but 123,676 tes. The parties would have been conscious that prediction of future tipping volumes was an uncertain matter. Furthermore in July 1996 there was the imminent start of landfill tax, a fiscal measure designed to reduce the volumes of waste disposed to landfill sites. Under section 40 of the Finance Act 1996, tax became chargeable at the rate of £7 per tonne on disposals made on or after 1 October 1996. This would undoubtedly have added to the uncertainties in July of that year.

34. In our view these uncertainties would inevitably have impinged more strongly on the vendors than on Wyvern. The vendors had a particular interest in achieving a sale. Unless their land could be sold for tipping it would be left in their hands with agricultural value only. Wyvern were in practice the only potential purchasers. Wyvern, as the owners of the existing tip and part of the extension land, and the Trotts together owned the development value of the extension land (except for the small, and inessential, Hunt parcel), and no part of that value could be realised without agreement between them. The question is how they would have divided that value between them. We do not think that they would have divided it equally. The combination of the uncertainties, deferment and Wyvern's control over the tipping operations would, we believe, have led to an agreement on the vendors' part at substantially less than 50% of the development value. An additional factor also, we think, would clearly have come into play. Part of the deal was that 116.4 acres of nearby agricultural land would be transferred to the Trotts, in effect replacing the 94.27 acres that they were selling to Wyvern. They would have realised that unless they reached agreement at that time there was no guarantee that the replacement land would remain available for transfer to them as the result of some later negotiation. Taking all these matters into account, we consider that, professionally advised as they were, they would have settled for 30%, and that the price they achieved should be treated as reflecting this.

35. The total consideration for the Trott land was £900,000. This was made up of a cash payment of £675,000 and the transfer to the Trotts of the 116.4 acres, which the parties to the transaction agreed to be worth £225,000. Although Mr Alesbury suggested that the £225,000 was likely to be an under-valuation, we have no evidence to show that this was the case. Accordingly we treat the £900,000 as the true worth of the transaction. The land sold was 94.27 acres. At the agricultural value of the extension land agreed by the parties to the present proceedings, £2,531 per acre, this land would have been worth at the valuation date £238,597. We are not aware that agricultural land prices were significantly different in July 1996, and we therefore adopt this figure as the agricultural value of the land sold at that date. If it is deducted from the £900,000, it gives the figure of £661,403 as

the Trotts' 30% share of the net development value of the land in their ownership, which would therefore be £2,204,677. We think that this amount represents the net development value of the land in their ownership as at the valuation date, reflecting the small amount of deferment at that date of the realisation of that value.

36. Properly evaluated, the Trott transaction does, we believe, show both the claimants' and the councils' assessments of the net development value of the extension land to be implausible. Mr Crawford assessed the net development value of the extension land at £8,400,000 with the Hunt land yet to be acquired. With the amount attributable to the Boyer land deducted from it (say £47,500 to reflect the amount paid for it less its existing use value), the figure becomes £8,353,000. The Trotts' share of this (£661,403) would represent a mere 7.9%, which we regard as a wholly implausible percentage for them to have settled at. On the other hand Mr Thaddeus's valuation of £1,155,000, less the existing use value of £327,000, represents a net development value of £848,000 for the whole of the extension land, including the Hunt land but excluding the Boyer land. If £197,000 for the net development value of the Hunt land (£200,000, less existing use value, say £3,000) is deducted from this, to arrive at the net development value of the land owned by Wyvern and the Trotts at the date of the Trott transaction, this figure becomes £651,000, which would imply that Wyvern actually paid more for the Trott land than the total amount of net development value attributable to Wyvern and the Trotts. Mr Thaddeus did say that he thought that the amount agreed for the Hunt land included an element of ransom value. We do not agree with this: but, even if the cost of acquiring the Hunt land is disregarded entirely, so that the net development value is taken to be £848,000, the Trotts' share would represent 79.9%, which, in the light of the factors we have discussed above, would in our view be wholly implausible.

37. We do in fact think that the amount agreed for the purchase of the Hunt land lends support to our analysis of the net development value. Mr Crawford took as the tipping volume that would be lost to Wyvern if they did not acquire the Hunt land the amount that could be tipped on the Hunt land itself (165,000 tes). Mr Thaddeus said that the Environment Agency would not have allowed an enclosed pocket like this within the tip and would have insisted that it be included as part of a re-entrant from the northerly boundary of the tip. He produced an indicative design for such an arrangement, and he estimated that the amount of tipping that would be lost as a result would be 330,000 tes. We think that a negotiation between Wyvern and the Hunt would have focussed on the possible amount of tipping that would be lost if the Hunt land was not acquired, with Wyvern contending for a lower volume and the vendors for a higher volume and advancing the same arguments as Mr Crawford and Mr Thaddeus respectively. Agreement would have been reached at some intermediate figure. Taking the total tipping capacity of the extension as 2.665 m tes and dividing this into the net development value we have deduced from the Trott transaction (£2,204,677) gives a value per tonne of £0.827. The amount agreed for the purchase of the Hunt land was £200,000, representing a net development value, allowing for 1.295 acres at £2,521 per acre, of £196,735, which at £0.827 per tonne represents 237,890 tes. This is close to the mid-point between the two valuers' figures, 247,500 tes. Analysed in this way, we think that the Hunt transaction is consistent with and supports the net development value we have derived from the Trott transaction.

38. We would add that we derive no assistance from the Walpole Drove transactions relied on by Mr Thaddeus. We cannot accept that there is a standard price range per acre at which all tipping land in north Somerset can be bought and sold, regardless of the sort of factors that we find to have applied in the case of the Trott transaction.

Development value: residual method

39. As we have said, there is no need to resort to a residual valuation in this case. However, both parties have tendered residual valuations and we think it appropriate to do a calculation of our own to demonstrate that the valuation we have undertaken on the basis of the transaction evidence can be reconciled with plausible assumptions on the constituent factors upon which such a valuation has to be based. We adopt Mr Thaddeus's spreadsheet model for the purpose this exercise, and we say what parameters we adopt and why we consider them to be plausible.

40. There was no significant difference between the parties on the capacity of the extension land. Mr Crawford had adopted 2,650,000 tes, Mr Thaddeus 2,665,000 tes. We adopt the higher figure. The capacity that would be sterilised were Wyvern unable to acquire the Hunt land would be, according to Mr Crawford, 165,000 tes and, according to Mr Thaddeus, 330,000 tes. In our view, Wyvern would have sought in their negotiations with the Environment Agency to minimise the volume that would be lost. Accepting Mr Thaddeus's argument that leaving a hole in the middle of the site would be environmentally unacceptable, we think it not unreasonable to anticipate that a scheme would be devised which satisfied the Agency in terms of all the technical problems that might be advanced. Hence the, volumes lost would be less than Mr Thaddeus's figure but more than Mr Crawford's. We adopt the figure of 238,000 tes, which is the rounded up figure we derived above when discussing the Hunt land transaction.

41. As to the annual rate of fill, it was agreed that the rate would increase (from the levels of between 190,000 and 200,000 tes in 1999/00 and 2000/01) to an eventual maximum annual input of 300,000 tes. However, the year by which that level would be reached was in dispute, Mr Crawford estimating that it would be 2003, and Mr Thaddeus adopting stepped increases which also reflected the anticipated dates of closure of the other Wyvern tips. Mr Thaddeus's figures appeared to us to be much more representative of the likely inputs, based upon the tipping tonnages that had been achieved up to 2001. After adopting an apportioned figure of 30,000 tes for the remainder of the financial year from November 2001 (the date upon which it was agreed tipping on the extension land commenced), he estimated 180,000 tes pa for 2002 to 2005, rising to 220,000 tes for 1 year, and eventually reaching 300,000 tes by 2007. In our view, Mr Crawford's estimates were optimistic not only in the light of historical inputs but also due to the environmental pressures to encourage more recycling that were, by 2001 really beginning to have an effect. We therefore adopt Mr Thaddeus's figures as the most appropriate, but the life of the tip becomes shortened due to the sterilisation of 238,000 tes as referred to above.

42. As to revenue and costs, Mr Crawford analysed these heads in detail to arrive at his figures. Mr Thaddeus went straight to profit in his valuation, analysing Wyvern's average profits for the 3 years immediately preceding the valuation date, and making adjustments to give his opinion of anticipated future profit from the extension land. Mr Crawford's anticipated revenue was £13.50 per tonne. Mr Thaddeus said that he did not agree with that figure, preferring to calculate the gate price by simply dividing the turnover achieved in 1999/00 by the tipped tonnage to give £13.01. With little between them we consider it appropriate to adopt a middle-range figure of £13.25.

43. There was a much wider divergence of opinion on the costs. Mr Crawford adopted a figure of £5.50 per tonne, which he said was based upon his wide knowledge of the waste management industry and the costs incurred by other national operators, and upon the figures extrapolated from Wyvern's accounts. These showed costs in the order of £6 to £7 per tonne, but they included depreciation, which was effectively a royalty and should

not, therefore, be included for this purpose. If that were removed, costs become £5 to £6 and he had taken a middle figure (which did include depreciation on the advance works). However, although he accepted in cross-examination that costs were likely to be higher in the extension land, due to the increased costs of creating the required cell structure, he said he thought those would be passed on to the customer.

44. Mr Thaddeus's costs amounted to £10.13 per tonne, but that figure was not directly derived from Wyvern's costs. He had taken Wyvern's profits of £6.40 per tonne, and reduced them by £3.52 to £2.88 to take account of the considerable additional costs that he anticipated would be incurred in operating the extension site. This included the cost of constructing the cells (adjusted from Wyvern's own figures), additional environmental costs, depreciation of capital works not already depreciated in the accounts, and the cost of the road widening. He did not accept that those additional costs would be recoverable.

45. In our view, Mr Thaddeus was right to contemplate that costs in connection with the tip extension would be higher than they had previously been, although we accept that a percentage, but not all, could possibly be recovered by passing them on. A reasonable assumption, in our view, would be to adjust Wyvern's historical profit downwards by £3.00 per tonne, to leave an anticipated profit of £3.40. This gives costs of £9.85, somewhat less than Mr Thaddeus's estimate, but significantly more than Mr Crawford's figures, which do not, in our view, adequately reflect the additional costs.

46. With regard to yield, Mr Crawford said that in his view, from his experience and analysis of other transactions, and the demand for landfill sites at the valuation date, a return of 9.5% for the first two years and 10% for the remainder was appropriate with an end-allowance of 30% to reflect risk. That percentage was in line with the decision in *Haddon.* He did not agree with Mr Thaddeus's contention for 24% (per his second valuation), or his argument that this was a high-risk business, that the site was a wasting asset and that the occupier would have difficulty raising finance. Mr Thaddeus accepted in cross-examination that lenders do indeed regularly finance operations of this nature. He used a return of 13% and an end allowance of 50% in his alternative valuation on the residual basis this being, he said, equivalent to an all in yield of 24%.

47. We accept Mr Crawford's opinion that, the adoption of a 24% all-in yield is somewhat pessimistic bearing in mind the circumstances here, particularly since this is an established and apparently well-run tip business. However, Mr Crawford's figures are, in our view, unduly optimistic and do not sufficiently reflect the risks that there are. We consider a more plausible all-in rate to be 20%, and we adopt this.

48. This leaves the question of deferment and we have already said that the parties would, in our opinion, treat the need as immediate. However, for the purposes of this valuation method, we consider it appropriate to allow one year for the construction of the first section of cells (not all of them, as construction of further cell areas could, of course, continue after tipping on the extension land had commenced).

49. The resultant valuation, which is at Appendix 4, becomes £2,660,000. If £324,000 is deducted from this to reflect the existing use value of the extension area less the Hunt land, the resulting figure, £2,336,000, is close to the net development value we have derived from the transaction evidence. We are satisfied that, on the evidence, the figures that we have adopted in this exercise are plausible. However, as we have already said,

although we recognise that within the range of plausibility different assumptions could be made that would produce substantially different outcomes both above and below our end result. That, as we have said above, is why we prefer a valuation based upon comparable transactions.

Highways

50. The case for the claimants was that, since condition 2 required the carrying out of the highway improvements, this made Wyvern's ability to implement the 1991 permission completely dependent on their being able to acquire the land needed for the widening of Dimmer Lane. The council said that there was no such complete dependence because, if Wyvern were not going to purchase the highway improvement land, it was very likely that the highway authority would take steps themselves to improve existing conditions along Dimmer Lane. Alternatively, the highway authority could have carried out a one-way entrance and exist scheme using an unwidened Dimmer Lane and other lanes. This alternative scheme, devised by the council's highway witness, Mr Parker, was the Parker loop. The existence of these two alternatives would have influenced the hypothetical negotiations for the CPO land, the council said, so that the landowners would have settled for a smaller percentage of the tip development value as their ransom payment.

51. The first alternative, the widening of Dimmer Lane in the same way as that proposed, reflected the need to deal with the existing conditions in Dimmer Lane. It would have been necessary, so the council said, to carry out the widening works in order to deal with conditions that, at the valuation date, were unacceptable and would have continued to be unacceptable even in the absence of tipping on the extension land. Mr Humphries referred to *Batchelor v Kent County Council* (1988) P & CR 320, (1989) 59 P & CR 357, (1991) 31 RVR 329, and *Wards Construction (Medway) Ltd v Barclays Bank plc* (1994) 68 P & CR 391 (which arose out of the same facts), where the need for highway improvements in the absence of the development of the inhibited land was accepted as properly taken into account when determining the ransom value of the subject land. He placed reliance on the conclusion of the inspector in his report following the CPO inquiry accepting "the generally held view that something needs to be done now. The various presentations of likely traffic flows and the life expectancy of the existing tip do not materially alter that argument."

52. Evidence for the claimants was given by Colin White BEng (Hons) MCIT MIHT, an associate with the design department of Mayer Brown, with responsibility for the design of new and improved highways. He said that he had been involved in the design and construction of highways for 17 years. He had been instructed to provide advice to the Snooks on their claim for compensation arising out of the CPO. Mr White said that the Parker loop could not be constructed in accordance with design standards or operate safely without improvements to Dimmer Lane and other roads in the loop. For this reason he did not consider that the Parker loop would have been accepted by the highway authority as an alternative to the Dimmer Lane improvement scheme identified by condition 2 of the 1991 planning permission. No further options for access to the landfill site were available which would avoid the need for the purchase of third party land, and construction costs for an alternative scheme would have been significantly greater than the CPO scheme. Thus the only realistic scheme providing acceptable access was a Dimmer Lane improvement scheme.

53. In the event that the 1991 permission was not going to be implemented, the residual amount of traffic using Dimmer Lane after the end of tipping would not, Mr White said, justify the improvement scheme. The inspector's report following the CPO inquiry recorded that county council's statement

that a traffic survey carried out in 1998 showed that the average weekday traffic flow was 532 vehicles, including 223 HGVs and that practically all the HGVs and a substantial proportion of other vehicles were travelling to and from the waste tip. The council's statement for the inquiry had stated that in June 1998 the number of refuse vehicles movements generated by the tip were stated by Wyvern to be about 200 per day. Thus, Mr White said, the total number of HGV movements generated by other uses in the vicinity of the tip was about 23.

54. Evidence for the council was given by Ian Richard McKellen Parker BSc Dip TE CEng MICE MCIT, a director of the Richard Parker Consultancy. Mr Parker had been instructed by the council after the land had been acquired and the Dimmer Lane improvements had been carried out, to advise whether, if the CPO had not been conferred, whether Dimmer Lane could have provided adequate highway facilities to serve existing uses and, if not, whether there were other arrangements or improvements utilising only highway land that could have been introduced to provide an improved facility.

55. Mr Parker said that in the absence of the CPO being confirmed he considered that the only practical alternative would have been to introduce a one-way system from the B3153 along Dimmer Lane and other lanes to Blackworthy Lane and then back onto the B3153. It would add about 1 km to the route. Certain sections of the route would be restricted to one-way operation, and it would be necessary to carry out carriageway strengthening works and a number of passing bays. It would be desirable to install traffic lights at the bridge over the railway in Blackworthy Road.

56. In evidence that we consider to have been balanced and professional Mr Parker readily acknowledged the shortcomings of the suggested one-way loop. His view was that it was, however, acceptable in the absence of the Dimmer Lane improvement. He agreed that, if the land for the Dimmer Lane improvement had been available, Wyvern would not have been able to persuade the highway authority to adopt another solution. He said that if the tipping stopped there would still be many cars needing to use Dimmer Lane, and although 300 vehicles a day was not abnormal traffic for a country lane, Dimmer Lane was narrower than other lanes in the loop. He considered that the Parker loop would be acceptable for up to 100 HGV movements a day, and, if tipping stopped, it would be implemented as a lower cost solution with, for example, no surfacing works being carried out.

57. Although we note the expression of view by the inspector on which the council places reliance, the question that has to be asked is whether, in the absence of the tip extension, the council would have gone to the lengths of making a CPO for the highway improvement land in order to carry out the improvements at considerable cost and in a way that would unavoidably destroy substantial lengths of hedgerow. We do not think that they would have done. If the tip were not to be extended, the traffic associated with it (about 200 HGV movements a day) would have ceased to use Dimmer Lane within a period of about two years. Other uses at the tip could be expected to continue, but the traffic attributable to these was of the order of 300 vehicles per day, of which only a small number, perhaps 23 per day, were HGVs. The improvement works to Dimmer Lane would inevitably be destructive of its character as a country lane, with 1000 metres of hedgerow being removed and kerbing inserted alongside the carriageway. We do not think that the highway authority would have regarded the scheme as justified, taking account of these adverse effects, the short period during which the tip traffic would continue and the low level of the residual traffic.

58. The council's second alternative was the Parker loop. We do not consider that the highway authority would have regarded this as an acceptable solution, and indeed as we have said, Mr Parker was ready to acknowledge its shortcomings. We do not think that a one-way system, directing a substantial volume of heavy goods vehicles along narrow, winding country lanes would ever have gained acceptance. Having walked the route, we are in no doubt about its inadequacies. In the hypothetical negotiations the parties would not, in our view, have placed any weight on the possibility that the highway authority might implement the Parker loop scheme in order to deal with the tip extension traffic.

59. On the other hand, Mr Parker acknowledged that the loop scheme would have been more suitable for dealing with the much lower volume of traffic that there would have been in the absence of the tip extension. The possibility of such a scheme would, we think, have influenced the hypothetical negotiations only to the extent that it might have been seen as an additional reason for discounting the possible widening of Dimmer Lane if tipping was only going to continue for another two years.

60. Our conclusion, therefore, is that the parties in the hypothetical negotiations would have discounted entirely both the possibility that, in the absence of the tip extension, the highway authority might widen Dimmer Lane anyway and the possibility that they might implement the Parker loop scheme as an alternative solution to the problem of the tip extension traffic. The ransom payment would have been arrived at on the basis that there was no effective alternative to the Dimmer Lane scheme if the tip extension was to go ahead.

Dimmer Lane ransom percentage

61. The final matter is the percentage of the value locked up by condition 2 that would be attributable to the owners of the land required for the road. Both valuers approached the issue on the basis that an overall percentage should be arrived at for division between the landowners in proportions that the valuers had agreed. For the claimants Mr Crawford took 50% because the position of the ransomers was as strong as it could be. Wyvern needed the land and they needed it without delay. Without it they could not realise the value locked up by condition 2. In these circumstances buyer and seller would divide that value equally between themselves.

62. Evidence for the council on this matter was given Mr Smith. In his view there were a number of reasons why the ransomers would have achieved less than 50%, and he put the figure at 30%. A principal reason consisted of the highway alternatives – on the one hand the certainty (as he put it) that, if Wyvern waited, the highway authority would solve the problem for them by implementing the scheme, which was needed to deal with the unacceptable existing condition in Dimmer Lane, and, on the other hand, the prospect of the Parker loop scheme being implemented. We have concluded that the negotiating parties would have discounted entirely both these possibilities.

63. Mr Smith said that Wyvern did not have a monopoly on waste disposal sites within Somerset and would have been expecting to compete with other landfill operations whose costs would not have included the acquisition of a ransom strip. Moreover Wyvern's existing contracts would significantly limit their ability to pass on increased costs during those contracts, which beyond that period they would still have needed to compete

with other sites. We are doubtful whether these are matters that go to the ransom percentage rather than to the development value of the tip itself. But we do not think in any event that they would in practice have limited the amount that Wyvern would have been willing to pay in order to realise the development value of the tip. We see no reason to think that Wyvern would have used up valuable space elsewhere, even if had been available to it, and incurred the additional transport costs of taking Dimmer waste elsewhere. Mr Smith suggested that Dimmer could be turned into a transfer station, but we do not regard this as realistic and we cannot in any event see that planning permission for such a use would have been granted without the imposition of a condition in the same terms as condition 2.

64. Finally, Mr Smith said that the multiplicity of ownership would have reduced the overall ransom percentage that Wyvern would have had to pay. We do not think that, since the individual proportions of the overall ransom percentage had been agreed, this remained a point on which Mr Smith could rely. It was envisaged that agreement would be reached with all of them at the same time. We can quite see that a developer, faced with a number of ransomers, might pay varying percentages to them, depending, for example, on the order in which negotiations took place, and there would always be one final ransomer to be dealt with. It does not seem to us, however, that a developer faced with a number of ransomers could necessarily expect to pay less in total for the ransom land than if he only had one party to negotiate with. We therefore do not see this as a reason for reducing the ransom percentage. We accordingly adopt 50%.

Claimants' entitlements

65. We assess the net development value of the extension land at £2,204,667. Fifty per cent of this, the amount attributable to the ransomers, is £1,102,338, which we round to £1,100,000; and 60% of this figure, the amount attributable to the Snook interests, is £660,000. At this point we should note the council's reliance on the August 1995 negotiations, in which the Snooks offered their interests to the council for a total amount that Mr Thaddeus analyses at £154,908. We do not think that this suggests that the figure we have reached for the value of their interests at the valuation date, September 1999, is wrong. In 1995 Wyvern owned part only of the tip. They had yet to acquire the Trott land, so that they did not have a site that was capable of development, and they had no early need to start tipping on the extension land. By July 1999, by contrast, they owned the land needed for development and their need to acquire the land for the highway improvement was effectively immediate.

66. The entitlements of the individual claimants are therefore as follows:

H A Snook (18% of £1,100,000) £198,000;

M L Snook (16% of £1,100,000) £176,000;

R H Snook (16% of £1,100,000) £176,000;

G A Snook and J A Petheram (10% of £1,100,000) £110,000.

67. The parties are now invited to make submissions as to costs. A letter relating to this accompanies this decision, which will not become final until the question of costs has been determined.

Dated 2 April 2004

George Bartlett QC, President

Paul R Francis FRICS

ACQ/219/2000

APPENDIX 1

Valuation of Extension Land at Dimmer Tip, Castle Cary

(Including Hunt Land)

by A P S Crawford MRICS MIQ

Annual Input (tonnes)	200,000		
Average Profit per Tonne	£8		
		£1,600,000	
Y P 2 years @ 10%		1.74	
		£ 2,776,860	
Increased annual input (tonnes)	300,000		
Average profit per tonne	£8		
		£2,400,000	

YP 7.5 years @ 10%		5.11	
PV deferred 2 years @ 10%		0.83	
			£10,130,042
Total			£12,906,901
Less Deduction for Risk (per Haddon)		30%	£ 3,872,070
Gross Value of Extension Land (Equivalent to £3.41 per tonne)			£ 9,034,831
Deduct Cost of Hunt Land			
Overall Capacity Hunt Land (tonnes)	165,000		
Average value per tonne	£3.41		
		£562,546	
Ransom Value at 50%			£ 281,273
			£ 8,753,558
Net Value of Dimmer Lane Extension Land – Say £ 8,750,000			

APPENDIX 2

D Thaddeus FRICS - Valuation 2

DISCOUNTED CASH FLOW - DIMMER TIP EXTENSION AREA

1	**Year**		**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	Totals
2	Input Tonnes		30000	180000	180000	180000	180000	220000	300000	300000	300000	300000	280000	215000	2665000
3	Existing Profit per tonne	6.40													
	Less additional working & site														
	costs & environmental costs over														
4	& above existing site post 01	3.06													
	Less Capital works not yet														
5	depreciated	0.337													
	(includes interest on advance works)														

	Less cost of road														
6	depreciated 12.4p/tonne	0.124													
7	Total profit post 01		2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	
8	Total annual profit		86370	518220	518220	518220	518220	633380	863700	863700	863700	863700	806120	618985	
9	PV Risk %		0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	
10	Years Deferment		2.75	3.75	4.75	5.75	6.75	7.75	8.75	9.75	10.75	11.75	12.75	13.75	
11	PV		0.553	0.446	0.360	0.290	0.234	0.189	0.152	0.123	0.099	0.080	0.064	0.052	
12	TOTALS		47803	231304	186535	150432	121316	119577	131499	106048	85522	68970	51913	32146	1333064
13	**TOTAL**				**Total**	**1333064**									
14	Less cost of Hunt Land say					**200000**									
15	total						**1,133,064**								
						Say	**1,133,000**								

													APPENDIX 3		
D Thaddeus FRICS - Valuation 3															
	DISCOUNTED CASH FLOW - DIMMER TIP EXTENSION AREA														
1	**Year**		**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	Totals	
2	Input Tonnes		30000	180000	180000	180000	180000	220000	300000	300000	300000	300000	265000	2435000	
3	Existing Profit per tonne	6.40													
	Less additional working & site														
	costs & environmental costs over														
4	& above existing site post 01	3.06													
	Less Capital works not yet														
5	depreciated	0.337													
	(includes interest on advance works)														

	Less cost of road													
6	depreciated 12.4p/tonne	0.124												
7	Total profit post 01		2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	2.879	
8	Total annual profit		86370	518220	518220	518220	518220	633380	863700	863700	863700	863700	762935	
9	PV Risk %		**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	**0.13**	
10	Years Deferment		2.75	3.75	4.75	5.75	6.75	7.75	8.75	9.75	10.75	11.75	12.75	
11	PV		0.71	0.63	0.56	0.50	0.44	0.39	0.34	0.30	0.27	0.24	0.21	
12	TOTALS		61716	327695	289996	256633	227109	245644	296433	262330	232151	205443	160597	2565747
13	**TOTAL**				**2565747**									
14	Less 50% for risk				**1282873**									
15	less cost of Hunt Land				**200000**									
16	TOTAL					**1152566**		**SAY**		**1115000**				

Lands Tribunal Residual Calculation **APPENDIX 4**

DISCOUNTED CASH FLOW - DIMMER TIP EXTENSION AREA

1	**Year**		**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	Totals
2	Input Tonnes		30000	180000	180000	180000	180000	220000	300000	300000	300000	300000	257000		2427000
3	Existing Profit per tonne	6.40													
	Less additional working & site														
	costs & environmental costs over		.												
4	& above existing site post 01	3.00													
	including capital works not yet														
	depreciated and cost of road									.					
	widening														

7	Total profit post 01		3.400	3.400	3.400	3.400	3.400	3.400	3.400	3.400	3.400	3.400	3.400		
8	Total annual profit		102000	612000	612000	612000	612000	748000	1020000	1020000	1020000	1020000	873800		
9	PV Risk %		0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20	0.20		
10	Years Deferment		1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00		
11	PV		0.833	0.694	0.579	0.482	0.402	0.335	0.279	0.233	0.194	0.162	0.135		
12	TOTALS		85000	425000	354167	295139	245949	250504	284663	237219	197683	164736	117603		2657663
13	**TOTAL**				**Total**	**2657663**									
						Say	**2,660,000**								

WARDS CONSTRUCTION (MEDWAY) LTD v. BARCLAYS BANK PLC AND KENT COUNTY COUNCIL

COURT OF APPEAL (Nourse, Beldam and Simon Brown L.JJ.): July 1, 1994

Compulsory purchase—Compensation—Housing development—Obligation upon developer to effect road improvements—Ransom value of land across which access to housing development gained—Valuation—Ransom strip compulsorily acquired—Compensation assessed by Lands Tribunal—Whether Lands Tribunal valuation contrary to "Pointe Gourde" principle—Whether Stokes v. Cambridge principle suitable starting point

In 1982 outline planning permission was granted to Wards Holdings PLC for the erection in four phases of 1,750 dwellings on land situated in Maidstone, Kent. The application site adjoined two parcels of land in the ownership of the claimant, one Hubert Dorrington Batchelor. It was a condition of the permission that no dwellings in phase II of the development would be occupied until certain off-site roadworks were completed. Those roadworks included the construction of a roundabout on one of the parcels of land owned by the claimant. That land ("the order land") was acquired by Kent County Council, as highway authority, by means of a compulsory purchase order which was confirmed by the Secretary of State in September 1983. The claimant's second parcel of land lay immediately to the east of the order land. Although access to the order land could be gained across the second parcel, it was not the sole means of access. The claimant issued a counter-notice under section 53 of the Land Compensation Act 1973 in respect of the second parcel, which was accepted by the highway authority who took possession of the second parcel in December 1986. In 1987, the Lands Tribunal valued the order land at £500,000 and the adjoining land at £150,000 (56 P. & C.R. 320). Following a successful appeal by the highway authority to the Court of Appeal ((1989) 59 P. & C.R. 357) the matter was remitted to the Lands Tribunal for rehearing. The member subsequently increased the total amount of compensation from £650,000 to in excess of £2 million ((1992) 1 E.G.L.R. 217). It had been agreed between Wards, who had not previously been a party to the reference, and the highway authority that Wards would bear 65 per cent of the total of any compensation awarded. A case was stated by the Lands Tribunal on the application of Wards Construction (Medway) Ltd as a person aggrieved by the Lands Tribunal's second valuation. The Lands Tribunal also acceded to a request from the claimant, who considered that £2.16 million was too low, to state a case for the opinion of the Court of Appeal.

Held, dismissing the appeal and cross appeal, that it was settled law that compensation for compulsory acquisition of land could not include any increase in the value of the acquired land which was due solely to the scheme underlying the acquisition. This was known as the *Pointe Gourde* principle. Nonetheless, where access to the order land could only be obtained across an adjoining strip of land, the adjoining strip would acquire a ransom value. The value of the order land would therefore need to be reduced in order to take into account the fact that the adjoining strip could only be acquired at a premium. This was known as the *Stokes v. Cambridge* principle. The difference between these two principles was that whilst the *Pointe Gourde* principle was a principle of law, the *Stokes v. Cambridge* principle was one of valuation. Whilst disregard of the *Pointe Gourde* principle would entitle the appellate court to interfere with the Lands Tribunal's decision, the *Stokes v. Cambridge* principle was merely a starting point from which the member could depart if he saw fit so to do. It was clear from the member's decision that he had given

himself an entirely correct direction as to the application of the *Pointe Gourde* principle. His decision was that even in the "no scheme world" the land could only have been acquired at a premium (the relevant scheme being the acquisition of the land to enable the construction of a roundabout thereon). Once the member had correctly directed himself as to the test to be applied, the valuation of the land was a question of fact for him. It had been submitted that since the member had been considering a multi-access site, the *Stokes v. Cambridge* principle was a wholly inappropriate starting point. However, it was for the member to decide whether that principle was a useful starting point or not. He had clearly been greatly influenced by a comparable situation which had arisen at Harlow, to which the member had referred in his decision. That was entirely a matter for him. His valuation might have been high, but there was no proper basis upon which it could be disturbed. As regards the claimant's cross appeal, the reasons for not reducing the member's award were also reasons for not increasing it. Both appeals would be dismissed accordingly.

Cases referred to:

(1) *Fraser v. City of Fraserville* [1917] A.C. 187.
(2) *Horn v. Sunderland Corporation* [1941] 2 K.B. 26.
(3) *Ozanne v. Hertfordshire County Council* [1988] R.V.R. 133, L.T.
(4) *Pointe Gourde Quarrying and Transport Co. Ltd v. Sub-Intendent of Crown Lands* [1947] A.C. 563; 63 T.L.R. 486, P.C.
(5) *Stokes v. Cambridge Corporation* (1961) 13 P. & C.R. 77.

Appeal by Wards Construction (Medway) Ltd and cross appeal by the claimant, Hubert Dorrington Batchelor against the decision of the Lands Tribunal (T. Hoyes FRICS) dated October 28, 1991. That decision was made on a reference by the claimant which had been remitted to the tribunal by the Court of Appeal, on appeal from the decision of W. Rees FRICS. The reference sought the determination of the amount of compensation payable to the claimant by Kent County Council in their capacity as highways authority pursuant to the compulsory acquisition of the freehold estate of two parcels of land situate at Maidstone, Kent. The facts and grounds of appeal are set out in the judgment of Nourse L.J.

Peter Boydell, Q.C. and *Rodney Stewart-Smith* for Wards Construction (Medway) Ltd.
Robin Purchas, Q.C., *Meyric Lewis* and *Andrew Newcombe* for the claimant.
Malcolm Spence, Q.C. and *Adrian Trevelyan Thomas* for the highway authority.

NOURSE L.J. These are two appeals by way of case stated against a decision of the Lands Tribunal (T. Hoyes Esq. FRICS) dated October 28, 1991. The decision was made on a reference by Hubert Dorrington Batchelor ("the claimant"), which had been remitted to the Tribunal by this court. The reference sought the determination of the amount of compensation payable to the claimant by the Kent County Council ("Kent") in their capacity as a highway authority consequent upon the compulsory acquisition of the freehold estate in two parcels of land situate on the eastern side of the junction of New Cut Road and Bearsted Road, Maidstone. The compensation awarded by Mr Hoyes in respect of the two parcels of land was £2.15 million and £10,000 respectively.

The case has a long history which can be collected from the reports of the earlier hearings in the Lands Tribunal and this court. The reference was first

heard by W. H. Rees Esq. FRICS, whose decision dated February 19, 1988 awarding compensation of £500,000 and £150,000 in respect of the two parcels is reported at (1988) 56 P. & C.R. 320. The decision of this court (Fox and Mann L.JJ. and Sir Roualeyn Cumming-Bruce) remitting the reference to the Lands Tribunal is reported at (1989) 59 P. & C.R. 357. The decision of Dr Hoyes, to whom I shall hereafter refer simply as "the member", is reported at (1992) 1 E.G.L.R. 217. In the circumstances, the background facts can now be briefly stated, mainly in the words of Mann L.J. when delivering the leading judgment in this court on July 26, 1989.

The Maidstone and Vicinity Town Map 1970 allocated the two parcels of land, together with a large area to their east and south now known as Grove Green, for residential development. Pursuant to that allocation Maidstone Borough Council ("Maidstone") on March 30, 1982 granted, on the application of Ward Holdings PLC, an outline planning permission for the development of a substantial area to the east and south of the two parcels for the erection of 1,750 dwellings in four phases. The permission was subject to a number of conditions of which that numbered (xvii)(b) provided that:

> no dwellings within Phase II shall be occupied until the off-site roadworks ... in respect of that phase are completed.

The reason for that condition, as expressed, was to secure a satisfactory, comprehensive and phased scheme of development.

Ward Holdings PLC is the parent company of Wards Construction (Medway) Ltd ("Wards"), which owns a substantial part of the allocated land, its north-west boundary being contiguous with the two parcels of land. Other parts of the allocated area are owned by other developers (Abbey Homesteads, McLean Homes/Barretts and Hillread Homes). Their ownerships are, in general terms, to the south and east of Wards' land. Also on March 30, 1982 Wards and another company entered into an agreement with Maidstone pursuant to section 52 of the Town and Country Planning Act 1971, one of whose terms was that the agreement with Kent next referred to should also be entered into.

On February 1, 1983 Kent, as the responsible highway authority, entered into an agreement with Wards pursuant to section 278 of the Highways Act 1980 in regard to the improvement of New Cut Road and Bearsted Road. The improvement included the construction of a new roundabout at the junction of the two roads. The improvement (which has long ago been completed) would have the effect, under condition (xvii)(b) of the planning permission, of unlocking Phase II of the development. The section 278 agreement committed Wards to bearing 65 per cent of the land acquisition costs.

The roundabout was to be (and is) situate upon the claimant's land. Kent had decided to use compulsory purchase powers to acquire the land, if necessary, on November 21, 1980. It was acquired by the Kent County Council (New Cut Road/Bearsted Road Improvement) Compulsory Purchase Order 1983 which was confirmed by the Secretary of State on September 12, 1983. That order authorised the acquisition of 0.86 acres of the claimant's land ("the order land"). That is the first of the two parcels with which the reference is concerned. Entry was made on the order land on August 1, 1984. The second of the two parcels ("the adjoining land") is immediately to the east of the order land and is 0.97 acres in extent. It was the subject of a counter-notice under section 53 of the Land Compensation Act

1973. That notice was accepted by Kent, who entered into possession of the adjoining land on December 1, 1986.

The first hearing of the reference by Mr Rees, at which five witnesses were called, took place over five days in October 1987. Kent then brought an appeal to this court by way of case stated. They contended that Mr Rees's valuation of the adjoining land at £150,000 should be set aside. The claimant also requested a case to be stated, but that request was withdrawn before it had been complied with. However, he was permitted to challenge the valuation of £500,000 for the order land. This court allowed the county council's appeal and acceded to the claimant's challenge. They remitted the assessment of compensation for both the order land and the adjoining land to the Lands Tribunal. The further hearing before the member took place over 14 days in October 1990 and January and March 1991. Thirteen witnesses were called.

Wards, not having been a party to the reference, were not represented at either hearing before the Lands Tribunal. They had been advised that there were procedural difficulties in their becoming a party and they were no doubt content that the battle should be fought by Kent on their joint behalf. However, it is hardly surprising that, after the member had increased the total amount of the compensation from £650,000 to £2.16 million, they became increasingly concerned at the prospect of having to bear 65 per cent of that amount.

Accordingly, on November 22, 1991, less than a month after the member's decision, Wards, claiming to be a person aggrieved by it, requested the Lands Tribunal to state a case for the opinion of this court. The request was initially refused, but in August 1992, after Wards had been given leave to apply for judicial review by way of an order of mandamus, the Tribunal agreed to state a case, which it did on February 22, 1993. Meanwhile the claimant, contending that the member's award of compensation was still too low, had himself asked for a case to be stated, as it duly was on April 6, 1992. On March 1, 1994, in circumstances into which I need not go, the Registrar made an order substituting Barclays Bank PLC ("the bank"), in place of the claimant, as a respondent to Wards' appeal and as the appellant in the claimant's appeal. It is nonetheless convenient to continue to refer to the claimant's appeal as such. The dispute relates only to the valuation of the order land. On neither appeal is the valuation of the adjoining land at £10,000 in question.

In this court the two cases were heard consecutively, the argument in Wards' and the claimant's appeals lasting for four days and one day respectively. My initial impression of the matter was a simple one. It seemed that the member's valuation of £2.15 million for the order land was an enormous amount for 0.86 acres for which the agreed existing use value was £3,000 and so vastly in excess of the £500,000 awarded by Mr Rees as to suggest that it must have been arrived at by some error of law. However, after reflecting carefully on the arguments of the parties and while I may remain mystified by certain aspects of the process of valuation, I have come to the conclusion that no error of law has been shown and that both appeals must be dismissed.

Wards' appeal

Although, subject to an estoppel to be mentioned later, it would have been both possible and in their interests for Kent to make submissions in support

of Wards' appeal, they elected not to do so. They simply declared general support for Wards' contentions. Inevitably, there were differences between the case made by Wards in this court and the case made by Kent before the member. These were mainly differences of emphasis rather than of substance. However, it appears that the member did not consider one of the points on which Wards primarily rely. If that was because he was not asked to consider it by Kent, Wards cannot now complain of his failure to do so.

Two well known decisions are at the heart of Wards' appeal. In *Pointe Gourde Quarrying and Transport Co. Ltd v. Sub-Intendent of Crown Lands*[1] the Privy Council reaffirmed the established principle (see, *e.g. Fraser v. City of Fraserville*[2]) that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition. In *Stokes v. Cambridge Corporation*[3] compensation had to be assessed for land for which the parties agreed a planning permission for industrial development must be assumed, provided that satisfactory access to the land could be obtained. Access could only be obtained across an adjoining strip of land in separate ownership. Since that gave the adjoining strip a ransom value, it was held by the Lands Tribunal that the value of the land compulsorily acquired must be reduced in order to take account of what its owner would have to pay in order to obtain access over the strip. At p. 90, the Tribunal, having dismissed as unrealistic the suggestion that the owner of the strip would be willing to sell it to a prospective developer of the land acquired (the back land) at no more than its bare price for housing or agriculture, continued:

> Manifestly, the owner of the front land, aware that he held the only key to the development of the back land, would expect to receive a substantial share of the profit which, if he withheld the key, would be unobtainable.

The Tribunal assessed the share of the profit at one third and made a corresponding deduction from the value of the land acquired.

It is important to emphasise at the outset that, while the *Pointe Gourde* principle is a principle of law, a disregard of which would entitle this court to interfere, the *Stokes v. Cambridge* principle, if such indeed it is, is one of valuation. In particular, as Mann L.J. pointed out[4] what is a "substantial" share of the profit must be a question for the Tribunal. When the matter was before this court in 1989 Kent argued that the inclusion of a ransom component in the market value of the order land by reference to the *Stokes v. Cambridge* principle would inevitably contravene the *Pointe Gourde* principle. Counsel said that it was the first case in which the relationship between the two principles had had to be considered. At p. 36, Mann L.J. said:

> I find no difficulty with the relationship. If a premium value is "entirely due to the scheme underlying the acquisition" then it must be disregarded. If it was pre-existent to the acquisition it must in my judgment be regarded. To ignore the pre-existent value would be to expropriate it without compensation and would be to contravene the

[1] [1947] A.C. 563.
[2] [1917] A.C. 187.
[3] (1961) 13 P. & C.R. 77.
[4] (1989) 59 P. & C.R. 36.

> fundamental principle of equivalence (see *Horn v. Sunderland Corporation* [1941] 2 K.B. 26).

It has been pointed out that when Mann L.J. referred to a premium value pre-existent to the acquisition, he must have meant one pre-existent to the scheme.

Mr Spence, Q.C., for Kent, accepted that they are estopped by the 1989 decision from arguing in this court that the inclusion of a ransom component would inevitably contravene the *Pointe Gourde* principle, although he reserved the right to argue that point at a higher level. Although Wards are not so estopped, Mr Boydell, Q.C., on their behalf, adopted a similar stance.

In 1989 this court was of the opinion that Mr Rees's award of £500,000 for the order land was neither explained nor explicable and that it was also impossible to understand how his award of £150,000 for the adjoining land had been arrived at. The effect of their decision was to remit the matter to the Lands Tribunal with a direction that there was no inconsistency between the *Pointe Gourde* and *Stokes v. Cambridge* principles and that both could and should be applied, so far as appropriate. Wards' primary contention on this appeal was that the member nevertheless failed to have proper regard to the *Pointe Gourde* principle and included in his award an increase in the value of the order land which was entirely due to the scheme underlying the acquisition. Secondly and in any event, they contended that by applying the *Stokes v. Cambridge* principle to a case such as this the member erred in law on that ground also.

The Pointe Gourde principle

In order correctly to apply the *Pointe Gourde* principle it is necessary, first, to identify the scheme and, secondly, its consequences. The valuer must then value the land by imagining the state of affairs, usually called "the no-scheme world", which would have existed if there had been no scheme.

At (1992) 1 E.G.L.R. 218J, under the heading "The scheme" the member said:

> In about 1984 a roundabout was constructed on the order land replacing the former T-junction of New Cut Road with Bearsted Road, and there is no dispute that this is the scheme underlying the acquisition of the order land. It is now common ground that in the "no-scheme" world the market for the reference land comprised the owners and/or developers of the Grove Green area seeking to implement the 1982 planning permission.

These observations give rise to two points of a preliminary nature.

First, Mr Boydell submitted that the scheme underlying the acquisition of the order land was not limited to the construction of the roundabout and the associated roadworks. He said that it included the sections 52 and 278 agreements and condition (xvii)(b) in the planning permission, so that the scheme should be defined as the construction of the roundabout in accordance with the requirements of those documents. This was hotly contested by Mr Purchas, Q.C., for the bank, who argued that the scheme was limited to the construction of the roundabout and the associated roadworks. Had the point been of real significance, Wards might well have been unable to go behind Kent's apparent acceptance of the identity of the scheme as stated by the member. However, the difference of opinion in this

court seems to me to have been one of emphasis rather than of substance. I cannot myself see how it can have decisive consequences.

Secondly, Mr Boydell and Mr Stewart-Smith, who followed him, both submitted that the member failed to identify either the no-scheme world or its consequences, that he effectively refused an invitation to do so and even that he was under the impression that this court, by its earlier decision, has directed that the *Pointe Gourde* principle was not to apply. They took us carefully through the member's decision with a view to making these submissions good. They placed special reliance on his opening observations at p. 217K where, having referred to Mr Rees's decision, he said:

> That decision was subject to appeal by the acquiring authority by a case stated to the Court of Appeal, which decided that the principle in *Pointe Gourde* and rule (3) of section 5 of the Land Compensation Act 1961 were not to apply so as to limit compensation.

In my view it is clear that the member was throughout seeking to apply the *Pointe Gourde* principle. His decision contains frequent references to the no-scheme world; in particular the following passage at p. 222C under the sub-heading "The 'no-scheme' world":

> It is accepted that the order land falls to be valued disregarding the scheme underlying the acquisition, identified above, and the fact that the acquisition is taking place under compulsion. It is not disputed that the market for the order land effectively comprised prospective developers of the Grove Green area of which Wards were the most prominent. It is also accepted that if the order land is found to be endowed with some measure of premium value, the amount is entirely in issue, that sum is to be treated as having accrued independent of the scheme. In essence, what falls to be ascertained is the bargain which would have been made between the claimant and a prospective developer-purchaser had the acquiring authority not intervened.

In that passage the member gave himself an entirely correct direction as to the application of the *Pointe Gourde* principle. It fits perfectly with his opening observation on which Wards especially rely. He did not there say that this court had decided that the principle was not to apply. He said that they had decided that it was not to apply *so as to limit compensation*. In other words, the member well understood that if the land had a premium value pre-existent to the scheme, then, as stated by Mann L.J., it had to be regarded.

Mr Boydell's main submission as to the no-scheme world was that what had to be considered were the events which were likely to have occurred if, on November 21, 1980 when Kent decided to use compulsory purchase powers to acquire the land, if necessary, they had instead told Wards that they would not use such powers, so that Wards would have been on their own. Mr Boydell argued that Wards would then have had five choices: (1) to negotiate with the claimant themselves; (2) to explore the four alternative roundabout schemes which the member (see in particular pp. 218M and 220A) found would provide some competition for the order land; (3) to explore the construction of access into Bearsted Road using land belonging exclusively to Wards; (4) to persuade Kent and Maidstone that there were no sustainable highway grounds for imposing condition (xvii)(b) of the planning permission and, if necessary, to pursue an appeal to the Secretary

of State; and (5) to wait for the highway improvements to be made in the normal course. In reply, Mr Boydell suggested that the most realistic of these possibilities were (4), with (3) a close second. Throughout he maintained that the last thing that Wards would have done would have been to pay the claimant £2.16 million.

It appears that possibility (4) was not considered by the member. I am by no means satisfied that he was asked to consider it, so no complaint can be made of his failure to do so. Each of the other possibilities was, to a greater or lesser extent, considered. In particular, possibility (3) was specifically considered and rejected on grounds of impracticability.

Having carefully considered the Member's decision in all its aspects and the arguments on both sides, I find myself unable to hold that the decision is flawed by a failure to have proper regard to the *Pointe Gourde* principle. I cannot say that the member included in his award an increase in the value of the order land which was entirely due to the scheme underlying the acquisition. I agree with Mr Purchas that he effectively found that in the no-scheme world it would have had a very substantial premium value. Once he had correctly directed himself as to the test to be applied, that was a question of fact to be decided by him on the available evidence. His finding was not against the weight of the evidence. I can detest no error of law in his decision.

Stokes v. Cambridge

At p. 223G under the sub-heading "Valuation principles" the member rejected the inducement approach to valuation except where there were a number of alternatives for access of about equal merit, and thus real competition. He then referred to evidence, which was accepted, that since the decision in *Stokes v. Cambridge* it had become common practice in the land market and in some references before the Lands Tribunal to attribute a percentage of the development value of back land to "access" land as a premium value. There was evidence before him that for small single access sites the market practice was to attribute up to 50 per cent as a premium value to the access land. He then referred to a transaction at Harlow, of which evidence had been given before him, although not before Mr Rees, which indicated 25 per cent for a very large single access situation. At p. 223H–J he continued:

> In the circumstances of a "multi access" site, such as Grove Green, it is unrealistic to attribute 50 per cent ... to one only of the "strategic" land parcels. Logic and practice (see *Ozanne v. Hertfordshire County Council* [1988] R.V.R. 133) dictate a sharing of the premium value but not necessarily equally. On the evidence, for a large site the starting figure is 25 per cent and, in my judgment, 15 per cent should be attributed to the order land as a premium value to reflect its relative importance amongst the "strategic" parcels to the imcomplete part of the Grove Green development in 1984.

At p. 224G, for the purposes of valuing the order land, the member started from a value for the land to be benefited by the access of £21,520,386. Applying a ransom value of 15 per cent, he arrived at a figure of £3,228,058, which he then discounted by one-third in respect of the risk that one of the four alternative schemes would be adopted, arriving at a figure of £2,149,886 say, £2.15 million.

Mr Boydell submitted that the *Stokes v. Cambridge* principle only applies to the simple case where the *sole* physical access to the back land is over the front land and where the whole of the back land and the whole of the front land are each in one ownership. Here the front land did not hold the only key to the development of the back land, since there were at least four possible alternatives; the front land was not required for physical access to the back land, but in order to comply with a planning condition requiring off-site highway improvements; such improvements would in any event have been carried out, regardless of the development of land to the south, possibly by 1994; there were several owners of the back land; this was a multi-access site. In the circumstances, submitted Mr Boydell, the *Stokes v. Cambridge* principle was a wholly inappropriate starting point for the valuation, since the basic ransom element was missing.

This point also was lengthily debated and many authorities were cited. Again it must be emphasised that the *Stokes v. Cambridge* principle, if such indeed it is, is one of valuation not of law. It was for the member to decide whether or not it was a useful starting point for his valuation of the order land. The arguments of Mr Boydell and Mr Stewart-Smith have failed to persuade me that his approach was wrong in law or that his valuation was insupportable on the evidence. On being asked how the member could reasonably have arrived at a valuation so vastly in excess of that of Mr Rees, Mr Purchas pointed to the comparable at Harlow, by which it is clear that the member was greatly influenced. That was entirely a matter for him. Mr Purchas said that that had thrown an entirely different light on the value of the order land. Certainly, I continue to feel that the valuation was very high. But I see no ground on which it can be interfered with by this court.

Subsidiary issues

Wards raise two subsidiary issues. First, they contend that the member erred in law in attaching neither relevance nor weight to the evidence of Mr J. V. Walker, a director of Ward Holdings PLC, who said that Wards could have secured access for residential development directly from Bearsted Road via frontage land belonging exclusively to them. At p. 222A–B, the member said of the evidence:

> Mr Walker did not produce any sketch scheme to demonstrate feasibility wholly within company owed land nor did he indicate that any such scheme had been discussed with the highway and planning authorities. I therefore attach neither relevance nor weight to this suggestion.

In my view it would be impossible for this court to say that the member erred in law in taking the view that he did of Mr Walker's evidence. The relevance and weight to be attached to it were entirely matters for him.

Secondly, Wards contend that there was no sufficient evidence on which the member could properly attribute to them either a notable degree of urgency to produce with implementing the approved proposal or a keen desire for the junction improvements to begin on the order land sufficient to increase its value. Here Mr Boydell submitted that the member rejected the uncontradicted evidence of Mr Walker, disregarded the evidence of Mrs V. A. Randall and Mr J. Atkins, who gave evidence in relation to town planning matters on behalf of Kent and Maidstone respectively, and ignored the difference between the real world and the no-scheme world. He said that in the no-scheme world there would have been no urgency because the terms

of any planning permission and connected agreements would have been different. I reject these submissions. Again these were matters to be decided upon by the member. In my view there was evidence on which he could make the findings that he did.

The claimant's appeal

The claimant's appeal, to which Kent are the only respondents, seeks to increase the member's award for the order land from £2.15 million to £3.583 million by impugning his view that the Grove Green development was a multi-access site and the consequences which were held to follow from it. I have already quoted the passage at [1992] 1 E.G.L.R. 223H–J. Also material in a passage at p. 223D under the sub-heading "Road pattern and order land" where the member, having passed over Phase I of the development said:

> The other phases require the formation of three new junctions to Weavering Street, one to each of Bearsted Road and New Cut Road, a connection to Grovewood Drive (the phase one spine road) together with some general widening of New Cut Road as a continuation of the junction improvements upon the order land; a number of "strategic" points are therefore involved. In terms of timing and the amount of land upon which development is constrained, 182.5 acres gross or 123 acres net, the works upon the order land are the most significant, but the other junctions and works become equally essential over the years to reducing areas as development progresses. For these reasons there was no absolute monopoly of improved road access, essential for the development of the 182.5 acres, residing in the order land.

On behalf of the bank Mr Purchas submitted that the member erred in finding that Grove Green was a multi-access site; alternatively, that his finding was against the weight of the evidence; and that he could not reasonably have come to the view that there was no absolute monopoly of improved road access residing in the order land. It followed, said Mr Purchas, that there was no basis for reducing the percentage of the development value which the member had regarded as appropriate to a very large single access situation from 25 per cent to 15 per cent. Mr Purchas also submitted that the member failed to give any adequate reasons for his conclusion that Grove Green was a multi-access site and that the bank was substantially prejudice by that failure.

In my view these submissions must be rejected. I agree with Mr Spence that not only was there nothing wrong in law with the member's finding that Grove Green was a multi-access site; it was also manifestly right in fact. The effect of that finding on the valuation of the order land was again a matter for the member himself. The reasons already given for not reducing his award are equally reasons for not increasing it. Moreover, Mr Spence was able to demonstrate that if the material passes in the member's decision are put together his process of reasoning sufficiently appears. His decision contains a most careful consideration of the points that were put to him.

Conclusion

I would dismiss both appeals.

BELDAM L.J. I agree.

SIMON BROWN L.J. I also agree.

Appeals dismissed and decisions of Lands Tribunal affirmed.
First respondent's (Barclays Bank) costs to be paid by the appellant (Wards); no order as to the costs of the second respondent (Kent County Council).
Second respondent's (Kent County Council) costs to be paid by the first respondent (Barclays Bank).
Three-quarters of the first respondent's (Batchelor) costs of the appeal dated July 26, 1989 to be paid by the second respondent (Kent County Council).
Second respondent's (Kent County Council) application for leave to appeal refused.

Solicitors—Kingsley Smith & Co., Chatham; Burges Salman, Bristol; Sharpe Pritchard, London.

Reporter—Christopher Wagstaffe.

BATCHELOR v. KENT COUNTY COUNCIL

COURT OF APPEAL (Fox and Mann L.JJ. and Sir Roualeyn Cumming-Bruce): July 26, 1989

Compulsory purchase—Compensation—Measure of compensation—Council acquired two plots of land for highway purposes—Adjacent land had outline planning permission for residential development— Permission included condition prohibiting development until road improvements done—Acquired land provided access to proposed development—Tribunal fixed compensation at £500,000 and £150,000—Whether tribunal failed to take into account increase in value due entirely to acquisition scheme in that prohibition on development effectively removed by acquisition scheme—Whether evidence to justify compensation amounts

The respondents owned two adjoining plots of land of 0.86 and 0.97 acres, the first of which was compulsorily acquired by the Kent County Council for highway purposes and the second of which was acquired as a result of a counter notice served by the respondent under section 53 of the Land Compensation Act 1973. On the town map they were shown as part of a larger area scheduled for residential development. Outline planning permission for development for residential purposes was granted in March 1982 in relation to a substantial area to the south and east of the two parcels of land. That planning permission was subject to conditions which inhibited the development until improvements to the road system were made. Kent County Council acting in its capacity as a highway authority built a roundabout on the compulsorily acquired plot, so making it possible for the development to take place. The Lands Tribunal determined that compensation of £500,000 be paid in respect of the first plot of land and £150,000 for the second. The council appealed by way of case stated on the ground that the valuation of £500,000 was far in excess of the value of the land on the open market and that in fixing that sum the Tribunal had disregarded the principle that compensation should not be fixed by reference to the increase in value due to the scheme underlying the acquisition. Here, it was alleged, the value had increased due to the fact that the new roundabout effectively removed the inhibition on development imposed in the outline planning permission. Alternatively, the council contended that the award did not take account of the "special suitability" provision in rule 3 of section 5 of the Land Compensation Act 1961. Further that there was no evidence on which the Tribunal could have fixed compensation at £500,000 and £150,000 for the two plots of land.

Held, allowing the appeal,

(1) the compensation payable was to be determined by reference to the value prior to the acquisition scheme and any increase in value due entirely to the acquisition scheme must be disregarded. However, the Tribunal had found on the facts, that the pre-acquisition value of the land had to take into account the fact that owners of the land to the east which also had planning permission might well wish to acquire the land owned. Consequently, there was no ground for holding that the Tribunal had failed to have regard to the principle that any increase in value due solely to the acquisition scheme had to be disregarded;

(2) the findings of the Tribunal that there were other possible accesses to the land to the south and east excluded the "special suitability" rule in rule 3 of section 5 of the Land Compensation Act 1961.

(3) however, on the facts, the reason given for the figure of £500,000 failed to explain the valuation and it was not possible to determine how that figure had been arrived at. Nor was there any explanation of how the figure of £150,000 was arrived

at. The orders would therefore be quashed and the matter remitted to the Tribunal for reconsideration.

Cases cited:

(1) *Blandrent Investment Developments* v. *British Gas Corporation* (1979) 252 E.G. 267, H.L.

(2) *Camrose (Viscount)* v. *Basingstoke Corporation* [1966] 1 W.L.R. 1100; [1966] 3 All E.R. 161, C.A.

(3) *Fraser* v. *Fraserville* [1917] A.C. 187.

(4) *Horn* v. *Sunderland Corporation* [1941] 2 K.B. 26.

(5) *I.R.C.* v. *Clay* [1909] 3 K.B. 466.

(6) *Pointe Gourde Quarrying and Transport Co.* v. *Sub-Intendent of Crown Lands* [1947] A.C. 565, P.C.

(7) *Raja Vyricherla Narayana Gajapatiraju* v. *Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302.

(8) *Stokes* v. *Cambridge Corporation* (1961) 13 P. & C.R. 77, Lands Tribunal.

(9) *Wilson* v. *Liverpool Corporation* [1971] 1 W.L.R. 302; [1971] 1 All E.R. 628, 22 P. & C.R. 282, C.A.

Appeal by way of case stated from a decision of the Lands Tribunal (W. H. Rees F.R.I.C.S. sitting on February 19, 1988) (see (1988) 56 P. & C.R. 320) whereby the Lands Tribunal had fixed the amount of compensation payable by the appellants, Kent County Council, to the respondent, Hubert Dorrington Batchelor, for two plots of land acquired by the appellant in its capacity as a highway authority at £500,000 and £150,000 respectively. The facts are set out in the judgment of Mann L.J.

Michael Spence, Q.C. and *Adrian Trevelian Thomas* for the appellant (defendant).

R. Purchas, Q.C. and *Meyric Lewis* for the respondent (plaintiff).

MANN L.J. This is an appeal by way of case stated from a decision of the Lands Tribunal (W. H. Rees Esq. F.R.I.C.S.) dated February 19, 1988. The decision was made on a reference by Hubert Dorrington Batchelor ("the claimant") which sought the determination of the amount of compensation payable to him by the Kent County Council in its capacity as a highway authority consequent upon the compulsory acquisition of the freehold estate in two parcels of land situate on the eastern side of the junction of New Cut Road and Bearsted Road, Maidstone. The case was stated at the request of the acquiring authority and is dated June 9, 1988. We were told that the claimant requested a case to be stated but that the request was withdrawn before there was a statement in pursuance of the request.

The Maidstone and vicinity town map 1970 allocated the two parcels together with a large area to their east and south, for residential development. Pursuant to that allocation Maidstone Borough Council on March 30, 1982, granted on the application of Ward Holdings Ltd. an outline planning permission for the development of a substantial area to the east and south of the two parcels for the erection of 1,750 dwellings. The permission was subject to a number of conditions of which the one material is xvii(b) which inhibited the occupation of dwellings in Phase II of the three-stage development until "off-site road works . . . in respect of that Phase are completed."

Ward Holdings Ltd. is the parent company of Wards Construction (Medway) Ltd. ("Wards") which owns a substantial part of the allocated land and whose boundary is at the north-west contiguous with the two par-

cels. Other parts of the allocated area are owned by other developers (Abbey Homesteads, McLean Homes/Barretts and Hillread Homes). Their ownerships are, in general terms, to the south and east of the land of Wards. The lands of the various developers are shown on the plan at p. 463 of the papers ("DEF1").

On February 1, 1983, the county council's highway authority entered into an agreement with Wards pursuant to section 278 of the Highways Act 1980 in regard to the improvement of New Cut Road and Bearsted Road. The improvement included the construction of a new roundabout at the junction of the two roads. The improvement (which has now been completed) would have the effect of unlocking Phase II of the development.

The roundabout was to be (and is) situate upon the claimant's land. It was secured for the County Council by the promotion of the Kent County Council (New Cut Road/Bearstead Road Improvement) Compulsory Purchase Order 1983 which was confirmed by the Secretary of State on September 12, 1983. The order authorised the acquisition of 0.86 acres of the claimant's land. The order land is the first of the two parcels with which the Tribunal was concerned. Entry was made on the order land on August 1, 1984. The second of the two parcels is immediately to the east of the order land and is 0.97 acres in extent. It was the subject of a counter notice under section 53 of the Land Compensation Act 1973. That notice was accepted by the County Council which entered into possession on December 1, 1986. The second parcel is conveniently referred to as "the adjoining land."

The decision of the Tribunal was that compensation for the order land (assessed as at August 1, 1984) was £500,000 and for the adjoining land (assessed as at December 1, 1986) was £150,000.

The acquiring authority now contends that the award for the order land did not observe the principle in *Pointe Gourde Quarrying and Transport Company Ltd.* v. *Sub-Intendent of Crown Lands* or alternatively did not heed rule 3 of section 5 of the Land Compensation Act 1961. The authority also contend that the award for the adjoining land had no basis on the evidence. The claimant disputes the application of both the principles in *Pointe Gourde* and Rule 3 and contends that the award for the adjoining land does have an evidential basis. In addition the claimant challenges the figure of £500,000 for the order land in that it involves an unexplained rejection of one of the claimant's valuations (valuation B) which put the value of the order land at £5,991,000.

I shall deal with the appeal under four heads, that is to say: the principle in *Pointe Gourde*, Rule 3, the £150,000 and the £500,000.

Pointe Gourde

The principle expressed by the Privy Council in *Pointe Gourde* does not have a statutory basis although the principle has a statutory extension in section 6 of the Land Compensation Act 1961 (as to which see *Camrose* v. *Basingstoke Corporation*). The principle was expressed in the advice of the Privy Council in these short terms[1]:

> It is well settled that compensation for the compulsory acquisition of

[1] [1947] A.C. 563 at p. 572.

> land cannot include an increase in value which is entirely due to the scheme underlying the acquisition.

The principle had an origin in the nineteenth century. It is to be found in high authority before 1947. Thus[2]:

> The value to be ascertained is the value . . . excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired, the question of what is the scheme being a question of fact . . . in each case.

The principle has never been doubted (see for example *Wilson* v. *Liverpool Corporation*). Mr. Malcolm Spence, Q.C. for the acquiring authority asserts that the Tribunal did not observe the principle. If it did not do so, the lack of observance is not expressed in the decision but is an inference. That it could be inferred is due to the sum awarded (£500,000) being in excess by far of any valuation of the order land in its existing state (£5,000) or as land available for residential development in accord with the town map allocation (£129,000 for the claimant at his higher figure and £38,907 for the acquiring authority (see valuations D and Y)). An excess over the value with actual or deemed planning permission can on occasion be justified on an assessment of compensation. Rule 2 of section 5 of the Act of 1961 provides:

> . . . the value of land shall . . . be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.

An occasion for justification which was required by Rule 2 was identified by the Lands Tribunal in *Stokes* v. *Cambridge Corporation*. In that case there was an assessment of compensation for land which had an agreed potential for industrial use subject to the provision of satisfactory access. Satisfactory access should be secured across an adjoining strip of land which was in separate ownership. The Lands Tribunal held that the value of the subject land should be diminished in the open market to take account of what the owner of the ransom strip would require before granting access across his land. The Tribunal said[3]:

> Manifestly, the owner of the front land, aware that he held the only key to the development of the [acquired] back land, would expect to receive a substantial share of the profit which, if he withheld the key, would be unobtainable.

What is "substantial" must be a question for the Tribunal.

Stokes v. *Cambridge Corporation* was not doubted before this court. Nor was it suggested that the open market value of acquired land cannot embody a ransom component if it holds a key to development elsewhere. Mr. Spence's argument was that in this case an embodiment of the component would contravene the *Pointe Gourde* principle.

The principle enjoins the Tribunal to ignore "an increase in value which is entirely due to the scheme underlying the acquisition." The scheme underlying the acquisition was here stated by the Tribunal to be "the construction of the roundabout and the associated road works." The rounda-

[2] *Fraser* v. *Fraserville* [1917] A.C. 187 at p. 194.
[3] (1961) 13 P. & C.R. 77 at p. 90.

bout and associated works when they were completed, removed the inhibition imposed by condition xvii(b) of the planning permission of March 30, 1982. The removal of the inhibition was a removal naturally to be desired by the landowners whose development was otherwise curtailed. The critical question as it seems to me is whether the scheme underlying the acquisition, as found, did enhance the value of the order land. The question is a question of fact. If there was found to be an enhancement, its dimension was a matter of valuation.

It is to be observed and critically so, that the Tribunal must search for an increase in value "entirely due to the scheme." The *Pointe Gourde* principle cannot diminish a pre-scheme value. Was there a particular value prior to the scheme underlying the acquisition? As it seems to me the Tribunal found that there was. It is recorded[4]:

> . . . any of the owners of the [development lands to the east and south-east] other than Wards would bid for [the Order land] as would Wards who are the most likely purchasers. Here, Wards were in a somewhat similar position to a party seeking premises in a given area who have four properties in view. Having regard to such a party's requirements, . . . the party prefers one of the four properties to any of the other three. Such a party would be keen to purchase the preferred property and would bid relatively more for it. The Order land, taking the whole of the evidence together, is equivalent to the preferred property . . .

The amount of the bid in the instant case would depend on, amongst other considerations, the likelihood of the Kent County Council as highway authority permitting a connection for the roundabout (for which planning permission is to be assumed (Act of 1961, s.15)) to be made to Bearsted Road. There was no evidence that the highway authority would raise an objection to the connection. Indeed the improvement of the Bearsted Road/New Cut Road junction would seem to be required by a projected traffic overload in 2000 without the flows generated by the inhibited land.

Mr. Spence told us that this case was the first to come before this court in which the relationship between the *Pointe Gourde* principle and *Stokes* v. *Cambridge Corporation* had to be considered. I find no difficulty with the relationship. If a premium value is "entirely due to the scheme underlying the acquisition" then it must be disregarded. If it was pre-existent to the acquisition it must in my judgment be regarded. To ignore the pre-existent value would be to expropriate it without compensation and would be to contravene the fundamental principle of equivalence (see *Horn* v. *Sunderland Corporation*.)

There is no ground on which the Tribunal can be flawed as having failed to have regard to the *Pointe Gourde* principle. Accordingly I would reject this ground of appeal.

Rule 3

Rule 3 of section 5 of the Act of 1961 was introduced into the statute book in 1919 (see Acquisition of Land Act 1919, s.2) and was, and is,

[4] (1988) 56 P. & C.R. 320 at pp. 330–331.

thought to have been intended to reverse the impact of the decision in *I.R.C.* v. *Clay*. The rule provides that in assessing compensation:

> The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers.

There are two (maybe three) limbs to the rule. The perception of limbs by the acquiring authority was first made in this court. No objection was made to the perception by the claimant.

Howsoever the rule is divided, one or other of the limbs can be motivated only if the land has a "special suitability or adaptability." This involves a consideration both of ordinary English words and of fact (as to the latter see *Blandrent Investment Developments Ltd.* v. *British Gas Corporation*.[5] A special suitability can be found where land has a positional advantage for the purpose in hand (see *Raja Vyricherla Narayana Gajapatiraju* v. *The Revenue Divisional Officer Vizagapatam.*) What then is "special"? This ordinary word in its adjectival sense is given the following meaning in the *Oxford English Dictionary*[6]:

> Of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree.

The Tribunal found that[7]:

> the most suitable access to the land to the south is that which has been formed on the order land.

The Tribunal further found it "was unable to find that the order land would have been the only access to the land to the south". There were other options. The findings of the Tribunal in my judgment are decisive against a "special suitability." The order land may have been the most suitable land for access to the south but it was not specially suitable for that purpose. Most suitable does not correspond with specially suitable.

In my judgment the appeal by reference to Rule 3 fails in that the prefatory words of the rule are not satisfied upon the facts as found.

The adjoining land and £150,000

The adjoining land was unaffected by the scheme. There were no entanglements. The only question was as to the value of the land for a residential purpose which was the purpose envisaged by the town map. I find and so find with regret, that it is impossible to understand how the Tribunal arrived at the figure of £150,000. The figure of £150,000 appears in the decision devoid of explanation. Mr. Purchas, Q.C. on behalf of the claimant suggested that the Tribunal preferred and adjusted the valuation for the acquiring authority (valuation Y). That was a valuation which resulted in £127,650 after deduction from a residential value of (*inter alia*) the cost of road improvements and sewerage. If the deductible amounts were diminished or extinguished the valuation would be higher. We were told by Mr.

[5] [1979] 252 E.G. 267 at p. 273.
[6] 2nd ed., Vol. XVI, p. 149.
[7] (1988) 56 P. & C.R. 320 at p. 323.

Purchas that there was dispute as to the need for the deductible amounts. I accept the dispute but as to how it was resolved I do not know. Upon the decision the resolution (if such there was) is not discernible. The suggestion of Mr. Purchas may be correct but this court cannot proceed on the basis of a beguiling suggestion. I regret the choice but there is no option in my view save to remit to the Tribunal the assessment for the adjoining land.

The £500,000 for the order land

This award was challenged by Mr. Purchas. Mr. Purchas did not have an appeal nor was there a respondent's notice. The challenge appeared in the skeleton argument and was brought to the attention of both the Registrar and the Respondent by a letter dated May 15, 1989. There was no surprise. If a respondent has no appeal of his own (as is the case here) then it seems to me that he can do nothing by way of formal step. Order 61 (which regulates appeals from tribunals to the Court of Appeal by way of case stated) contains no provision for a formal step and the expressed application of Ord. 59, r. 10(Ord. 61, r. 3(5)) seems to me to be decisive against the incorporation of the provisions for a respondent's notice in Ord. 59, r. 6. There is an omission in the rules which the rules committee may wish to consider. As it is, Mr. Purchas was invited to argue his point.

The point is that the award of £500,000 is neither explained nor explicable. The acquiring authority did not submit a valuation which incorporated a premium value. The claimant (through Mr. Pocock) submitted two. Of the two valuations B is the one which seems to have been relevant. It was a valuation which had as its basis:

> one-third of the difference between the immediate net increased development value of the remainder the development land and its deferred value for say 10 years.

The conclusion of this valuation was the figure of £5,991,000.

The Tribunal said this[8]:

> The amount for the Order land on the basis of either X or F can be considered as being "back markers" in the negotiations. However, they are dwarfed by two amounts contained in Valuation B which would in my judgment be the most important amounts which would be in the minds of the parties. These were:
>
> 1. One third of the difference due to deferment £5,491,000
> 2. The advantage to a developer (of a secured access) £500,000
>
> These amounts were criticised by the respondent; it was said that £500,000 had no support. Corresponding sums are to be found in Valuation Y but generally they are much lower than the above as were the amounts of additional costs spoken to by Mr. Heard [for the County Council]. However all indicate substantial sums. It does not follow that the whole of such amounts should be added in a calculation; in negotiation the parties would divide them and not necessarily equally.

Counsel on each side found this passage to be inexplicable. So do I. Valuation Y for the acquiring authority was a valuation for a residential devel-

[8] *Ibid.* at p. 332.

opment and had no correspondence with valuation B. I thought that some words were missing from the decision but we were assured that there had been no omission. If the order land had a premium value (as inferentially it had) then why and how was the Tribunal's figure determined? I do not and cannot know. My ignorance is not founded on an absence of reason (no complaint was made of absence) but upon a reason which does not approach the conclusion.

The value of the order land must in my judgment also be remitted to the Tribunal.

FOX L.J. I agree.

SIR ROUALEYN CUMMING-BRUCE I also agree.

Matters specified in judgment remitted to Lands Tribunal. Costs reserved. Leave to appeal refused.

Solicitors—The County Solicitor; Hallett & Co.

[HOUSE OF LORDS]

*HERTFORDSHIRE COUNTY COUNCIL . . . APPELLANTS

AND

OZANNE AND OTHERS . . . . . RESPONDENTS

1990 Dec. 10, 11, 12;
1991 Feb. 14

Lord Mackay of Clashfern L.C., Lord Keith of Kinkel, Lord Brightman, Lord Oliver of Aylmerton and Lord Lowry

Compulsory Purchase—Compensation—Assessment—Special suitability or adaptability of land for purpose—Land acquired for realignment of existing highway—Stopping up of existing highway under statutory powers—Whether statutory powers must relate to use of land acquired—Whether acquired land applied to purpose "in pursuance of" statutory powers—Land Compensation Act 1961 (9 & 10 Eliz. 2, c. 33), s. 5(3)

A compulsory purchase order authorised the compulsory purchase of land belonging to the claimants adjoining the south side of a lane. The purpose of the order was described as, inter alia, the construction of a new highway. No stopping-up order by the Secretary of State under section 209 of the Town and Country Planning Act 1971 was at any material time made in respect of the existing lane, and no part of the existing lane that could be affected by any such order lay within the land acquired from the claimants. The claimants referred the question of compensation to the Lands Tribunal, claiming that the land had been acquired in order to enable residential development of an area north of the lane and that its value was thereby enhanced. The Lands Tribunal determined compensation of £1,240,000, as against the agreed agricultural value of the land at £5,500. The acquiring authority appealed to the Court of Appeal on the grounds, inter alia, that the tribunal had not identified the scheme underlying the acquisition and, therefore had failed to identify, as it was necessary to do, the extent to which the value of the land was affected by the scheme and that providing a realignment of the lane was a purpose to which the land could be applied only if the existing lane were stopped up under statutory powers and that, accordingly, under rule (3) of section 5 of the Land Compensation Act 1961[1] the special suitability or adaptability of the land for that purpose should not have been taken into account by the tribunal. The Court of Appeal held that rule (3) of section 5 of the Act of 1961 did not apply but remitted the case to the Lands Tribunal on the issue of what the scheme underlying the acquisition had been.

On appeal by the acquiring authority:—

Held, dismissing the appeal, that on the true construction of rule (3) of section 5 of the Land Compensation Act 1961 the statutory powers referred to were powers which were necessary to enable a person entitled to use the land to apply it to the purpose in question; and that statutory powers not related to the use of the land acquired to stop up a highway on other land, not part of the land acquired, could not found the application of rule (3) (post, pp. 111D–G, 112H—113B, 114C–F).

Hampson v. Department of Education and Science [1990] 3 W.L.R. 42, H.L.(E.) applied.

[1] Land Compensation Act 1961, s. 5(3): see post, p. 109B–C.

Cedars Rapids Manufacturing and Power Co. v. Lacoste [1914] A.C. 569, P.C. distinguished.

Decision of the Court of Appeal [1989] 2 E.G.L.R. 18 affirmed.

The following cases are referred to in the opinion of Lord Mackay of Clashfern L.C.:

Cedars Rapids Manufacturing and Power Co. v. Lacoste [1914] A.C. 569, P.C.

Hampson v. Department of Education and Science [1990] 3 W.L.R. 42; [1990] 2 All E.R. 513, H.L.(E.)

Horn v. Sunderland Corporation [1941] 2 K.B. 26; [1941] 1 All E.R. 480, C.A.

The following additional cases were cited in argument:

Inland Revenue Commissioners v. Clay [1914] 3 K.B. 466, C.A.

Lucas and Chesterfield Gas and Water Board, In re an Arbitration [1909] 1 K.B. 16, C.A.

Ossalinsky (Countess) and Manchester Corporation, In re an Arbitration, 13 April 1883, D.C., unreported, but see *Browne and Allan's Law of Compensation,* 2nd ed. (1903), pp. 659–671, where the judgment of the court is set out.

Rugby Joint Water Board v. Shaw-Fox [1973] A.C. 202; [1972] 2 W.L.R. 757; [1972] 1 All E.R. 1057, H.L.(E.)

APPEAL from the Court of Appeal.

This was an appeal by the acquiring authority, the Hertfordshire County Council, by leave of the House of Lords from the decision of the Court of Appeal (Fox and Mann L.JJ. and Sir Roualeyn Cumming-Bruce) [1989] 2 E.G.L.R. 18 given on 28 July 1989.

The claimants, Percy James Ozanne, Michael John Wilson and Rothschild Trust Co. (C.I.) Ltd., claimed compensation in respect of the value of their freehold interest in land compulsorily acquired by the acquiring authority and in respect of disturbance and injurious affection of other land. The acquiring authority had entered on and taken possession of the land acquired, approximately 1·605 hectares on the south side of Thorley Lane, Bishop's Stortford, Hertfordshire, on or about 6 March 1978.

The Lands Tribunal (C. R. Mallett Esq., F.R.I.C.S.) [1988] 2 E.G.L.R. 213 on 2 March 1988 determined the total amount of compensation payable in respect of the compulsory acquisition of the freehold interest in the claimants' land to be £1,240,000. The tribunal having at the request of the acquiring authority stated a case for the decision of the Court of Appeal, the acquiring authority by notice of motion dated 15 November 1988 appealed to the Court of Appeal, seeking an order that the decision of the tribunal be set aside or varied, their contentions on the questions of law raised by the case stated being that the tribunal had erred in law in holding that the special suitability or adaptability of the reference land for the realignment and improvement of Thorley Lane should be taken into account, notwithstanding section 5(3) of the Land Compensation Act 1961, when it had not been in dispute that the reference land could only be applied to that purpose in the exercise of statutory powers to stop up, divert and improve that highway and when there had been no evidence that the special suitability

A or adaptability of the land could be realised other than by the use of statutory powers; in failing to ask itself and find what the scheme of the acquiring authority that had underlain the compulsory purchase of the land had been; in considering [1988] 2 E.G.L.R. 213, 216 an "imaginary world where the powers of compulsory acquisition do not exist;" in considering that it was not "material that the 1974 planning permission did not impose a condition as to the southern access;" in finding that by B March 1974 "the [East Hertfordshire] District Council had a controlling interest in the consortium" when there had been no evidence of the existence of any consortium and no evidence of the interest (if any) of the district council in such a consortium if it had existed; and in concluding that, even if the acquiring authority had assumed responsibility for providing a southern access at some undetermined date, that could C be a reason for not imposing a condition restricting development until such access had been provided, if the acquiring authority had otherwise considered such condition necessary or appropriate; and that the tribunal had not been entitled to find "that the 1974 planning permission did not impose a condition as to the southern access, because by that time the district council had a controlling interest in the consortium and the [acquiring authority] had assumed responsibility for providing the D southern access," having regard to the only contemporaneous evidence as to the reasons therefor, which had been contained in internal acquiring authority memoranda dated 30 October, 6 November and 7 December 1973.

The Court of Appeal held that rule (3) of section 5 of the Act of 1961 did not apply to the assessment of the claimants' compensation but E allowed the acquiring authority's appeal to the extent of ordering that the issue as to what the scheme underlying the acquisition had been and any matters consequential on the tribunal's identification of the scheme be remitted to the tribunal. The Court of Appeal refused the acquiring authority leave to appeal to the House of Lords, but on 14 December 1989 the Appeal Committee of the House of Lords (Lord Bridge of Harwich, Lord Griffiths and Lord Jauncey of Tullichettle) allowed a F petition by the authority for leave.

Michael Rich Q.C. and *John Howell* for the acquiring authority.
Matthew Horton Q.C. and *Sebastian Head* for the claimants.

Their Lordships took time for consideration.

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14 February 1991. LORD MACKAY OF CLASHFERN L.C. My Lords, this is an appeal by the Hertfordshire County Council from an order of the Court of Appeal [1989] 2 E.G.L.R. 18 dated 2 August 1989 allowing the council's appeal from a decision of the Lands Tribunal [1988] 2 E.G.L.R. 213 given on 2 March 1988 whereby the council was ordered to pay £1,240,000 in compensation to the respondents ("the claimants") H but remitting to the tribunal the issue as to what was the scheme and any matters consequent upon the tribunal's identification of it. This appeal proceeds by virtue of leave granted by this House on 14 December 1989.

The council is the highway authority for the county of Hertford on whose behalf the East Hertfordshire District Council (Thorley Lane, Bishop's Stortford) Compulsory Purchase Order 1976 was made. That order authorised the compulsory purchase of 1·605 hectares of land

adjoining the south side of Thorley Lane, Bishop's Stortford, the property of the claimants. The compulsory purchase order was made under section 214 of the Highways Act 1959 and section 22 of the Land Compensation Act 1973 and the purpose for which the purchase was authorised was described as:

> "(a) the construction of a new highway from the existing junction of Thorley Lane and the London–Norwich trunk road A11 [to] a point 123 metres west of the junction of Thorley Lane and Pynchbek at Bishop's Stortford in the district of East Hertfordshire in the county of Hertford; (b) the construction of new highways to connect the above-mentioned highway with the existing road system at Bishops Avenue and Pynchbek at Bishop's Stortford; (c) the improvement of Thorley Lane and Oxcroft, Bishop's Stortford; and (d) the mitigation of the adverse effect which the existence or use of the new highways proposed to be constructed and improved at (a), (b) and (c) above will have on the surroundings of the highways."

The claimants referred the question of the determination of the amount of compensation payable to them on the acquisition of the land to the Lands Tribunal. The agricultural value of the land was agreed to be £5,500. The claimants contended that the land was a "ransom strip." They argued that the land was required in order to enable residential development of a substantial area lying to the north of Thorley Lane which has been referred to conveniently as the Thorley Development Area. The claimants contended that, since the land was necessary in order to enable the development of the Thorley Development Area to proceed, its value was considerably enhanced. By a calculation relating to the difference between the value of the Thorley Development Area if development was possible and compared with its value if no development was possible the claimants contended that the land should be valued at £1,240,000, which appears a remarkably large figure for the amount of land in question, particularly as the planning permission granted in respect of the Thorley Development Area does not appear to have required as a condition that an access from the south of the development area should be made available over the land. The Lands Tribunal determined compensation in the sum of £1,240,000 being the member's assessment of the value of the land under the terms of the relevant statutes.

The council appealed to the Court of Appeal. There the council had two arguments. The first was that the Lands Tribunal had not identified the scheme underlying the acquisition and, therefore, had failed to identify, as it was necessary to do, the extent to which the value of the land was affected by the scheme. The Court of Appeal accepted this argument and remitted the case to the tribunal on the issue as to what was the scheme and any matters consequent upon the tribunal's identification of the scheme. They ordered the costs in the tribunal to be costs in the cause and three-quarters of the council's costs in the Court of Appeal to be paid by the claimants.

On the merits of this part of the case your Lordships are not called upon to adjudicate, although, of course, the question of costs in the Court of Appeal may be affected by the decision of this appeal to your Lordships' House.

The second argument advanced by the council in the Court of Appeal was the only argument with which your Lordships are concerned.

If it were to succeed, there would be no need for the case to go back to the Lands Tribunal and the compensation could be determined as the agricultural value of the land.

The assessment of compensation for the compulsory acquisition of the land is subject to the provisions of section 5 of the Land Compensation Act 1961 which provides:

> "Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules: (1) No allowance shall be made on account of the acquisition being compulsory: (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers . . ."

The only provision relied upon by the council before your Lordships is that:

> "The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers . . ."

Counsel made it absolutely clear that, having considered the matter, the council's argument was based solely on the passage I have just quoted.

The statutory powers which the council say are relevant are the powers to stop up an existing highway which are contained in section 209 of the Town and Country Planning Act 1971. No order under this provision had been produced and your Lordships were informed by counsel for the council that it has not established that any order was made.

The argument for the council was that the land could be used for the realignment of Thorley Lane only if there were a stopping-up order by the Secretary of State in respect of the existing Thorley Lane. It is accepted that no part of the existing Thorley Lane that could be affected by any such stopping-up order lies within the land acquired from the claimants.

In elaborating their contention, the council argued that it could not be disputed that the land had an enhanced value over its agricultural value only in respect of its special suitability or adaptability for the purpose of providing a realignment of Thorley Lane, further that in order that it should be used as a realignment of Thorley Lane it was necessary that part of Thorley Lane should be stopped up and that, since Thorley Lane was a public highway, such stopping up required the exercise of statutory powers. On this basis, it was claimed that the part of rule (3) relied upon required the special suitability or adaptability of the land for use for the realignment of Thorley Lane to be disregarded in assessing the compensation for the compulsory acquisition of the land and, therefore, required the compensation to be determined at agricultural value, namely £5,500.

In support of this argument, the council submitted that all compensation for compulsory acquisition is statutory; that the Acquisition

of Land (Assessment of Compensation) Act 1919, in which rule (3) was originally enacted and which is now consolidated in the Act of 1961, was passed for the purpose of mitigating the evil of excessive compensation; that special suitability or adaptability of the land for a purpose for which there is no market apart from the special needs of a particular purchaser or requirements of any authority possessing compulsory purchase powers are dealt with in the part of rule (3) not relied upon here; and that it is necessary to give some other subject matter to the part of the rule relied upon from the subject matter of the part not relied upon, if a sound construction of the part relied upon is to be made.

It was submitted that it was legitimate, in order to arrive at a sound conclusion upon the scope of the part of the rule relied upon, to look at cases decided before Parliament passed the Act of 1919 and that in doing so *Cedars Rapids Manufacturing and Power Co. v. Lacoste* [1914] A.C. 569, a decision of the Privy Council on appeal from the Superior Court of Quebec, provided an example of the class of case which Parliament had in mind in enacting the part of rule (3) relied upon by the council. Finally it was submitted that the purpose in question in rule (3) must be one to which the land being acquired can be applied and whether the land can be so applied only in pursuant of statutory powers must be determinative of the application of the first part of the rule.

In opening the appeal counsel did not refer to the Second Report of the Committee dealing with the Law and Practice relating to the Acquisition and Valuation of Land for Public Purposes (1918), (Cd. 9229) usually referred to as "the Scott Report" because its recommendations had not been implemented in the Act that followed in 1919.

Counsel for the claimants replied that the statutory powers referred to in the part of the rule relied upon by the council must be those which empowered the application of the land taken to the purpose for which it was specially suitable or adaptable and that the powers must be powers granted to the person thereby enabled to apply the land taken to the purpose for which it was specially suitable or adaptable. He further submitted that the stopping up of Thorley Lane, in exercise of powers of the Secretary of State to make a stopping-up order, could affect rights of the public only in respect of those parts of the land comprising Thorley Lane affected by the order, at the time when it took effect, and that this in no way affected or empowered any uses to which the land acquired from the claimants could be applied.

Counsel for the claimants submitted that the construction of the rule relied upon was clear and that accordingly it was not necessary to examine the history of the process by which it had first come to be enacted, but by way of background he referred your Lordships to the Scott Report. He also pointed out that the construction advanced by the council would appear to rule out from consideration purposes for which planning permission would be required or building regulation consent might be required under the Building Act 1984, and he gave a variety of illustrations of other types of consent granted under statutory powers as essential to particular uses of land which would fall to be excluded from account if the council's construction were to prevail.

In the course of his reply counsel for the council referred to the speech of my noble and learned friend, Lord Lowry, in *Hampson v.*

Department of Education and Science [1990] 3 W.L.R. 42, particularly at p. 49A.

A comparison of the Act of 1919 and in particular the rules that it enacted for assessing compensation with the pre-existing law makes it clear that the general intention of Parliament in 1919 was to direct the omission from compensation for compulsory acquisition of certain items which under the previous law had been included. This view is strongly supported by the opinion of Scott L.J., as he had by then become, in *Horn v. Sunderland Corporation* [1941] 2 K.B. 26, 40, where he said:

> "The main object of the Act of 1919 was undoubtedly to mitigate the evil of excessive compensation which had grown up out of the theory, evolved by the courts, that because the sale was compulsory the seller must be treated by the assessing tribunal sympathetically as an unwilling seller selling to a willing buyer."

To go further and seek to suggest that the meaning of particular provisions adopted by Parliament in 1919 could be discovered by identifying the particular cases in the previous law that these provisions were intended to reverse appears to me to amount to speculation upon which it is not profitable to enter in the present appeal.

I regard the language in question as sufficiently plain to reach a clear conclusion upon its application to the present case. The special suitability or adaptability of the land for any purpose is directed to be left out of account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers. This is expressed in the passive voice but the context shows that the application referred to is by a person using the land and, therefore, the statutory powers in question must be powers enabling a person entitled to use the land to apply it to the purpose in question and since the purpose in question is one to which the land could be applied *only* in pursuance of the statutory powers the statutory powers must be necessary to enable such person to use the land for that purpose. I do not see how statutory powers not related to the use of the land acquired could form a basis for the application of this part of the rule.

Therefore, I consider that statutory powers conferred upon the Secretary of State to order the stopping up of a highway on land which is not part of the land being acquired could not form the basis of the application of this part of the rule to the land acquired. Since the only statutory powers here relied upon by the council are the statutory powers of the Secretary of State to stop up parts of Thorley Lane, I consider that the council's argument must fail.

The construction of the relevant part of the rule which I have adopted is consistent with the approach taken by my noble and learned friend, Lord Lowry, to the construction of the words "in pursuance of" in a different enactment in *Hampson's* case (Race Relations Act 1976, section 41(*b*)).

As I said earlier, in the submissions for the council great stress was laid on the decision of the Privy Council in *Cedars Rapids Manufacturing and Power Co. v. Lacoste* [1914] A.C. 569 as illustrative of the type of case with which the part of the rule founded upon was intended to deal by reversing the Committee's decision. Cedars Rapids was incorporated by a statute of the Parliament of Canada of 1904 and it was thereby empowered to construct and develop water powers in or adjacent to the St. Lawrence river in a certain parish and to take by way of expropriation

lands within that parish actually required for those purposes. The respondents in the appeal owned, within the limits of the Cedars Rapids Company's Act, two islands in the river and certain rights over a promontory of land. One of the islands was at the head of the Cedars Rapids, the promontory was at the foot of the rapids and the second island was between. There was a fall of some 28 feet in all from the head to the foot of the rapids. The respondents' rights upon the promontory consisted of a reservation of a road and the right to erect a mill with the right to use the power of the water flowing by and over the land. The question before the Privy Council related to the basis upon which compensation for the two islands and the respondents' rights in the promontory should be determined. Giving the judgment of the Board, Lord Dunedin said, at pp. 579–580:

> "The real question to be investigated was, for what would these three subjects have been sold, had they been put up to auction without the appellant company being in existence with its acquired powers, but with the possibility of that or any other company coming into existence and obtaining powers. It is on account of the latter consideration that their Lordships, while unable to accept the judgment under appeal, are also unable to restore the judgment of the arbitrators. Unfortunately, the appellants led no evidence except as to bare agriculture value. Now, with regard to the Ile aux Vaches and the reserved water rights, it seems possible that there may be some value over and above the bare value. If the situation be naturally favourable to the establishment of power works like those of the appellants, then it is possible that the respondents and others might have been prepared to offer an enhanced value on this account, taking the chances of a situation in which they might or might not obtain the requisite parliamentary powers to work out a commercial scheme. But the value emerging through a grant of such powers having been actually given cannot after the event be taken into account. . . . These considerations, however, point to the possibility of something more being given for the subjects than the bare value; or in other words, that if they had been put up to auction as beforesaid, there was a probability of a purchaser who was looking out for special advantages being content to give this enhanced value in the hope that he would get the other powers and acquire the other rights which were necessary for a realised scheme."

In the passages that I have quoted the Privy Council was recognising that the application of the lands to be acquired for use by a company obtaining the necessary statutory powers to work out a commercial scheme was a matter that should be taken into account in determining the compensation. It appears clear, from the facts, that the Privy Council made these observations in connection with lands and rights over lands which were required to be used in order to implement a scheme which required Parliamentary powers. The interpretation which I have placed upon the part of rule (3) relied upon in this case would have the effect that the enhancement of value referred to by the Privy Council in the *Cedars Rapids* case in the passage to which I have referred would not be taken into account in a case to which rule (3) of section 2 of the Act of 1919 and its statutory successor applied. I consider, therefore, that the council's submission was correct that the *Cedars Rapids* decision provides an illustration of the cases that

Parliament has covered by the part of the rule founded upon, although wrong in contending that it applies to the present case. In the *Cedars Rapids* case the purpose giving rise to the enhancement of value, namely the use of the lands in question as part of a water-power development of the type in question, could only arise where the appropriate statutory powers had been granted, whereas in the present case the land acquired could have been used for a highway without the exercise of any statutory power and certainly was not dependent upon the Secretary of State exercising any statutory power to stop up any part of Thorley Lane. I should perhaps add that it is clear, from the passage that I have quoted from the decision in the *Cedars Rapids* case, that the obtaining of the requisite Parliamentary powers was to be borne in mind as providing opportunity for realisation of the enhanced value. Even after the company had obtained the necessary statutory powers, they also required the consent of the Dominion Government to erect works in the bed of the river and to abstract water from it but the provisions of rule (3) do not refer to this. This I think goes to emphasise the distinction referred to by counsel for the claimants when he pointed out that, if the present case were covered by the rule, it was very difficult to see why the rule should not also cover a purpose to which a piece of land could be put only after obtaining some particular statutory consent such as planning permission, consent under the Building Acts, or the like. It is clear from the modern statutory provisions governing compensation for the compulsory acquisition of land that the question of what types of development would receive planning consent is highly relevant to the determination of compensation for compulsory acquisition and any construction of the provision founded upon which resulted in any enhancement of the value of a piece of land resulting from its use for a purpose which required planning permission being disregarded would be absurd.

The Lands Tribunal came to the same conclusion as I have done on the submission of the council which has been the subject of appeal to your Lordships' House. The member said [1988] 2 E.G.L.R. 213, 216:

> "Clearly the first limb of the provision of rule (3) cannot apply in that the special suitability or adaptability of the land can be realised other than by the use of statutory powers."

In the Court of Appeal Mann L.J. dealt with the argument in his way [1989] 2 E.G.L.R. 18, 20:

> "Mr. Rich relied upon the first limb of the rule, and put the matter in this way: the Thorley Lane improvement included not only the construction of the new carriageway but also the closure of certain parts of the existing lane (none of which were on the reference land). That, he said, could be achieved only in the exercise of statutory powers, the exact nature of which I do not particularise because there may be doubt as to whether the proper procedures were subjected to adherence. Undoubtedly the reference land was locationally suitable for the improvement, and it may even be taken that it has 'a special suitability.' However, I am not persuaded by the argument. Mr. Horton countered it by saying that private developers can and do construct roads or road improvements upon land which they own, subject only to the obtaining of planning permission. He also pointed out that developers frequently have to stop up existing highways and they may be authorised to do so at

their own instance under section 209 of the Town and Country Planning Act 1971. That being so, and bearing in mind that the statutory closure was not upon the reference land, I do not see, in common with the tribunal (albeit for different reasons), that rule (3) applies."

The order for costs made in the Court of Appeal no doubt reflects the fact that the Court of Appeal decided against the council on this argument, although in their favour on the other argument which resulted in the Court of Appeal deciding to remit the case to the Lands Tribunal. Since in my opinion the result on the argument adduced to your Lordships is the same as it was both in the Lands Tribunal and in the Court of Appeal, the decision of the Court of Appeal as to costs should stand, but the council having failed in their appeal to this House must pay the claimants' costs here.

LORD KEITH OF KINKEL. My Lords, I have had the oportunity of considering in draft the speech delivered by my noble and learned friend, the Lord Chancellor. I agree with it, and for the reasons he has given would dismiss the appeal.

LORD BRIGHTMAN. My Lords, I also agree with the speech delivered by my noble and learned friend, the Lord Chancellor, and for the reasons given by him would dismiss this appeal.

LORD OLIVER OF AYLMERTON. My Lords, I have had the advantage of reading in draft the speech perpared by my noble and learned friend, the Lord Chancellor. I agree with it and, for the reasons which he has given, I, too, would dismiss the appeal and make the order which he proposes.

LORD LOWRY. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, the Lord Chancellor. I agree with it and, for the reasons which he has given, I, too, would dismiss the appeal and make the order which he proposes.

Appeal dismissed with costs.

Solicitors: County Secretary, Hertfordshire County Council; Berwin Leighton.

M. G.

APPENDIX 2 - Chronology

Key

Correspondence not icluded in SEGRO's chronology of negotiations

Date of correspondence	Form of correspondence	Status - Open/WP/StC/P&C	From	To	Subject & comments
21-Nov-24	email	Open	Segro	Prologis	Notification of intention to make a DCO and seeking clarification on Jarrom land status following open competitive bidding for the land.
03-Dec-24	email	Open	Prologis	Segro	Prologis confirms they have acquired Jarrom land - forming part of the Prologis/MAG application.
06-Dec-24	email	Open	Segro	Prologis	Request to confirm if Prologis has completed "deal" with MAG. Suggestion to meet in New Year (2025) to discuss a comprehensive development.
17-Dec-24	email	Open	Segro	Prologis	Segro requesting dates to meet in the new year (2025).
19-Dec-24	email (with letter attachement)	Open	Prologis	Segro	Prologis reiterated acquisition of Jarrom land and confirmed completion of an agreement with MAG advising this comprises all the land to deliver the planning application. Prologis advised this will enable access to the land south of Hyam's Lane. Prologis invited Segro to provide dates for meeting.
06-Jan-25	email	Open	Segro	Prologis	Suggested dates 13th Jan - 17th Jan 2025
09-Jan-25	email	Open	Prologis	Segro	Alternative meeting dates provided - 21st -27th January 2025
10-Jan-25	email	Open	Prologis	Segro	Prologis offering alternative location of Solihull.
21-Jan-25	email	Open	Segro	Prologis	SEGRO notifying Prologis of DCO public consultation period.
12-Feb-25	MEETING		-	-	MEETING
21-Feb-25	email	Open	Segro	Prologis	Segro identifies a couple of potential ways forward - Option 1 - Segro acquires Prologis land (not specific on MAG land or Jarrom land) and Option 2 - Segro & Prologis form a Joint Venture (mechanism and split to be determined). No details provided.
07-Mar-25	email (with letter attachement)	WP & StC	Prologis	Segro	Prologis confirms all dialogue should be with Prologis. Prologis confirms no constrains to delivering the planning application. Prologis confirms planning application designed to facilitate future expansion south of Hyam's Lane. Prologis confirms it does not agree with CA powers over its land and that there are alternative routes to achieving the comprehensive development of the Freeport. Prologis provides response to Options 1 & 2 (in the Segro email 21 Feb 25). Prologis confirms it is opn to exploring the Joint Venture and invites Segro to provide detail on how the Joint Venture would work. Prologis further provides an Option 3 & Option 4. Option 3 sets out how access to the land south of Hyam's Lane could be provided. Option 4 suggests that Prologis could acquire Segro interets.
03-Apr-25	email	Open	Segro	Prologis	Segro acknowledging receipt of letter 7 March 2025. No response from Segro on request for details on the Joint Venture structure or arrangements. No response from Segro on the Access option proposal. No response by Segro on the acquisition proposal. Segro requests dates for a meeting to discuss.
11-Apr-25	email	Open	Prologis	Segro	Prologis requesting response to potential option structures presented 7 March 25.
11-Apr-25	email	Open	Prologis	Segro	Prologis requesting representation from LCC Highways and NH to S.42 consultation to ensure Prologs/MAG planning application is designed and masterplanned to facilitate further expansion to the south of Hyam's Lane.
22-Apr-25	email	Confidential	Segro	Prologis	Consultation responses provided by SEGRO
24-Apr-25	email (with letter attachement)	P&C, WP & StC	Segro	Prologis	*SEGRO response to Prologis letter of 7 March 2025.*
27-May-25	email (with letter attachement)	P&C, WP & StC	Prologis	Segro	Prologis responding to the Segro letter of 24 April 2025. Prologis disagree that DCO represents the only route to bring land forward and explains the benefits of the Prologis/MAG application and that it provides the highway access to the Segro scheme south of Hyam's Lane. Prologis provides a response to options 1-4. Prologis seeking details and clarification on various matters.
11-Jun-25	email (with letter attachement)	WP & StC	Segro	Prologis	Segro letter with no details in response to Prologis letter of 27 May 2025. Suggestion that best way to progress is via a meeting and dates provided 7-15th July 2025.
09-Jul-25	email	Open	Prologis	Segro	Prologis request to Segro in advance of proposed meeting (14 July 2025) for information to be provided which would support Segro's claim that they cannot pursue Option 3. Prologis request for assessment of viability. Prologis reqest to understand the reasons why Segro cannot pursue Option 3. Prologis suggestion that Segro's threat of CA is unjustified and suggesting there are credible alternatives.
09-Jul-25	email	Open	Segro	Prologis	Segro acknowledgement of email but no confirmation that appraisals will be shared in advance or brought to the meeting. Stating that Segro will come prepared to discuss financial details.

09-Jul-25	email	Open	Prologis	Segro	Prologis suggestion that it would be helpful to run through the Segro appraisals & assumptions to undertand why Segro claim Option 3 is unviable.
14-Jul-25	MEETING				MEETING
21-Jul-25	email	Open	Prologis	Segro	Prologis shared draft minutes of Meeting with Segro. 17 bullet points. Segro did not provide vaibility appraisals as requested by Prologis.
21-Jul-25	email	Open	Segro	Prologis	Segro acknowledgement of Prologis draft minutes
21-Jul-25	email	Open	Segro	Prologis	Segro confirming they will revert on draft minutes and suggested dates for a meeting.
29-Jul-25	email	Open	Segro	Prologis	Segro provide comments to Prologis draft minutes.
05-Aug-25	email (with attachment)	Open	Prologis	Segro	Prologis comments to Segro responses on the minutes.
06-Aug-25	MEETING		-	-	MEETING - Prologis shared masterplan for Application showing how scheme safeguards route for Segro land south of Hyam's Lane.
08-Aug-25	email	Open	Segro	Prologis	SEGRO email identifying 6 draft points from 6 August 2025 meeting. Segro agreed to follow up with a proposal to Prologis in September 2025 which will include a Joint Venture option (option 2) and for Segro to acquire Prologis interest (Option 1). Segro shared their appraisal for the land south of Hyam's Lane (in isolation) which Segro stated is unviable (Option 3 - Access option).
12-Aug-25	email	Open	Prologis	Segro	Prologis request for SEGRO to share responses from National Highways and LCC highways to the non-statutory Consultation (as per request in April 2025 - to ensure Prologs/MAG planning application reflects highways feedback as part of facilitating further expansion to the south of Hyam's Lane.
28-Aug-25					DCO Application Submitted
14-Aug-25	email (with attachments)	Open	Prologis	Segro	Prologis response to meeting minutes of 6 Aug 25 making substantive changes to the minutes to accurately reflect record of the meeting.
02-Sep-25	email	Open	Prologis	Segro	Prologis further request for Segro to share responses from National Highways and LCC highways to the non-statutory Consultation.
03-Sep-25	email	Open	Segro	Prologis	Segro response declining request for non-statutory consultees' responses stating a summary is included in the consultation report (when PINS upload).
03-Sep-25	email	Open	Prologis	Segro	Prologis further request for SEGRO to share non-statutory consultation (not the summary) to ensure coordinated development planning.
04-Sep-25	email	Open	Segro	Prologis	Segro response declining request for non-stat consultees responses.
05-Sep-25	email	Open	Prologis	Segro	5th request for SEGRO to share non-statutory consultation. Prologis explains that both National Highways & LCC highways are actively encouraging collaboration between Prologis & Segro - that collaboration is hampered if Segro resist sharing information. Prologis state that this risks undermining the credebility of the Segro consultation process and frustrates attempts to find a sollution. Prologis state that in the interests of transparecy and collaboration which will allow Prologis to deliver the schemes and facilitate access to the Segro land south of Hyam's Lane, they request Segro should share the consultation responses in full.
05-Sep-25	email (with attachment)	WP, P&C, StC	Segro	Prologis	Segro letter stating they are not able to progress the Access option but focus on providing 2 WP offers (but subject to investment Committee approval).
15-Sep-25	email	Open	Prologis	Segro	Prologis confirm receipt of 5 September 25 letter and advise will respond on the 2 options set out. Prologis make further request for Segro to share non-statutory National Highways & LCC highways consultation responses still outstanding.
17-Sep-25	email	Open	Segro	Prologis	Segro confirming amended minutes from 6th August meeting are not agreed, stating recollection of the meeting differs, do not agree with the amendments but provide no comments, substantive explanation or amendments.
17-Sep-25	email (with attachment)	Open	Prologis	Segro	Prologis response to Segro email 17th September - stating Prologis made detailed minutes and belive amendments accurately reflect the meeting. Prologis invites Segro to comment specifically on what is not agreed particularly in relation to technical and viability matters (central to the DCO/CA case). Prolgis request Segro to state what is not agreed and reasons why - including the costs south of Hyam's Lane, phasing, access proposal to the Segro land south iof Hyam's LAne, build out assumptions, Segro's viability position. Prologis also request copy of Segro's viability appraisals requested at the meeting of 6th August but still not received.
29-Sep-25	email (with attachment)	WP	Prologis	Segro	Prologis response to Segro letter of 5th September 2025. Prologis reference DCO application being withdrawn and request this time is used (with a pause before being re-submitted) to agree commercial terms (which was also suggested to Segro on the 6th August meeting). Prologis request Segro financial and viability information to properly consider the options put forward - specifically in relation to viability of the Segro DCO, to assess basis for valuation and profit share and equalisation. Prologis requets Access Option 3 (Access option) to be considered by Segro (further to 7 March 25 letter and 27 May 25 letters). Prologis again stating that Segro have not provided any material evidence to support the claim that this is not viable. Prologis states that they will provide detailed Heads of Terms for the Option 3 Access Solution. Prologis state they are willing to consider the Joint Venture option subject to meaningful negotiation of the terms which to date has not taken place.
08-Oct-25	email (with attachment)	Open	Segro	Prologis	Segro brief response to Prologis 29 September 2025 letter - requesting parties enter and NDA in order for Segro to share financial infomration and requesting Prologis confirm it has has authroity to conclude an agreement with Segro in respect of the Prologis & MAG interests.

14-Oct-25	email	Open	Prologis	Segro	Prologis provides draft NDA for Segro. Prologis confirms authoriation to act for MAG (MAG has authorised and copied on correspondence).
14-Oct-25	email	Open	Segro	Prologis	Segro response to Prologis email 17 September 2025. Brief response stating Segro do not agree but not stating reasons or what specific points are not agreed.
23-Oct-25	email (with attachment)	Open	Segro	Prologis	Segro acknowledgement of receipt of NDA. Segro also stating they wish to copy MAG on correspondence notwithstanding Prologis is authorised to negotiate on behalf of MAG.
27-Oct-25	email (with attachment)	Open	Prologis	Segro	Prologis email confirming they will review the Segro amendments to the NDA. Prologis confirming they are content for Segro to copy MAG on correspondence. Prologis point out that MAG had confirmed already authority to Segro in email of 9 May 2025. Segro had previously confirmed they would copy MAG on correspondence but had not been doing so. Prologis confirms they have no objection to Segro copying MAG.
29-Oct-25	email (with attachment)	Open	Prologis	Segro	Prologis confirminging accepted Segro changes to the NDA and providing signed NDA to Segro.
29-Oct-25	email (with attachment)	WP	Segro	Prologis	Segro response to Prologis letter of 29 September 2025. Stating DCO resubmitted but no reference to Prologis suggested deferral to agree commercial terms. Segro suggestion for both parties to appoint independent valuers to facilitate discussions on value. Segro confirm they will share information but such sharing must be reciprocal and request for Prologis to share financial infomration on its own scheme.
04-Nov-25	email (with attachment)	WP	Prologis	Segro	Prologis letter responding to Segro letter 29 October 2025. Prologis reiterating request for Segro to provide appraisals (including detail on cost breakdown and supporting information - in their absence commercial negotiations difficult to progress). Prologis requested over 9 weeks ago and still waiting. Prologis confirms it will produce Access Option Heads of Terms. Programme and dates for sharing information set out.
04-Nov-25	MEETING WITH E M FREEPORT				Prologis, MAG & Segro meeting with E M Freeport.
05-Nov-25	email (with attachment)	Open	Prologis	EM Freeport	Prologis letter to E M Freeport following 4 November 2025 meeting confirming Prologis commitment to supporting investment into the freeport. Prologis stated concerns over the DCO which has applied for compulsory acquisition of Prologis land. Prologis sought short deferral to allow time to agree commercial terms and the mechanism to deliver an access solution to the land south of Hyam's Lane. This would avoid CA powers being required over Prologis land. Prologis welcomed the discussion in the meeting with the freeport over pause or for Segro to withdraw the application. To support this Prologis gave a commitment to circulate draft Heards of Terms for the Access solution and requested Segro prepare heads of terms for the JV option.
07-Nov-25	email (with attachment)	Open	Segro	E M Freeport	Segro letter to East Midlands Freeport following joint meeting stating Segro not willing to defer DCO submission.
11-Nov-25	email (with attachment)	Open	Prologis	E M Freeport	Prologis confirms willinmgness to progress the Joint Venture approach and confirmed waiting for Segro Heads of Terms setting out Segro's proposal. Prologis also states that Access option should also still be considered as a straightforward and deliverable solution. Prologis confirming the interface between the two schemes has been designed to facilitate access to the Segro land south of Hyam's Lane.
12-Nov-25	MoU	-	-	-	MoU between Prologis & Segro completed.
13-Nov-25	email (with attachment)	WP	Segro	Prologis	Segro response to Prologis letter 4 November 2025.
17-Nov-25	email (with attachment)	P&C, WP	Segro	Prologis	Following completion of NDA, Segro share financial appraisals of EMG2 (full & South of Hyam's Lane), note on assumptions, Infrastructure Cost Plan, and illustartive masterplan and high level JV Heads to deliver the DCO only.
18-Nov-25	email (with attachment)	StC, P&C	Prologis	Segro	Prologis provides detailed Heads of Terms to Segro for the access solution to the South of Hyam's Lane including plans for the Spine Road and Link Road in accordance with Planning Application parameters and illustative masterplan.
21-Nov-25	TEAMS MEETING				Segro talk through information shared 17th November 25
26-Nov-25	email (with attachment)	StC, P&C	Prologis	Segro	Prologis share financial appraisal of the Prologis/MAG Planning Application scheme and illustrative mastreplan, explanatory note of the appraisal, cost plan of infrastructure and land servicing costs, parameters plan & illustartive mastreplan.
01-Dec-25	TEAMS MEETING				Prologis presented to Segro the detailed explanation of the technical information shared with Segro on 26 November 2025.
02-Dec-25	email (with attachment)	StC, P&C	Prologis	Segro	Prologis provides comments on the Segro Joint Venture Heads of Terms in advance of meeting 3 December 2025. Prologis request copy of the option agreement Segro have with Aldridge. Prologis request when Segro will provide comments on the Access Option Heads of Terms provided by Prologis 18 November 2025.
03-Dec-25	TEAMS MEETING				TEAMS MEETING to discuss JV option HoT's and Access Option HoT's.
08-Dec-25	email (with attachments)	StC	Segro	Prologis	Segro response to Prologis initial commercial queries on JV Hot's and Access Option Heads of Terms.
12-Dec-25	email (with attachment)	StC, P&C & WP	Prologis	Segro	Prologis comments on the Segro questions to the Access Option Heads of Terms and response to Segro points on the JV Heads of Terms.
19-Dec-25	email	Open	Segro	Prologis	Segro requesting an in person meeting between 12-15 January 2026 to move matters forward.

22-Dec-25	email	Open	Prologis	Segro	Prologis requesting Segro respond on the matters raised in Prologis email of 12 December 2025. Prologis also requested Segro re-issue the revised heads of terms for the proposed JV stating that Segro had agreed to re-issue these picking up on points discussed at the teams meeting of 3 December 2025.
06-Jan-26	MEETING WITH E M FREEPORT				Meeting with Segro, Prologis & E M Freeport.
21-Jan-26	email	Open	Segro	Prologis	Segro email to confirm that they will be coming back shortly following the pre-christmas discussions (presumably referncing the 3 December 2025 teams meeting).
13-Feb-26	email (with attachment)	P&C, WP	Segro	Prologis	Segro letter stating that Segro has concerns regarding whether Access Option or Joint Venture with prologis are credible routes. Segro set out 11 bullet points why Segro now considers the Access Option is not a reliable mechanism for delivering the DCO.
24-Feb-26	email (with attachment)	Open (letter is open, but the covering email states Confidential)	Prologis	Segro	Prologis letter querying why Segro now states that the Access option & Joint Venture are now not credible routes. Prologis raising concerns why Segro are not willing to progress either. Prologis references the specific reasons why Segro state the Access option is not credible. Prologis states it is keen to explore these and demonstarte solutions to each. Prologis states it is premature to to discontinue negoatiations on the alternatives to compulsory acquisition and are keen to discuss these at the meeting on 25 February 26.
25-Feb-26	MEETING				MEETING Segro & Prologis
26-Feb-26	email (with attachment)	Open (letter is open, but the covering email states Confidential)	Segro	Prologis	Segro responding to Prologis letter of 24 February 2025 and Meeting on 25th February 2026 recording actions. 1. Segro stated they would provide summary of Aldridge option (subject to Landowner approval) 2. Details of other land insterest held by Segro. 3. Committed to examine any alternative JV structures.
27-Feb-26	email (with attachment)	Open	Prologis	Segro	Prologis letter responding to Segro letter of 26th February 2026. Prologis reminding Segro that they committed to providing updated Heads of Terms for the Joint Venture option which has been outstanding since 3 December 2025. In response to any dispute over values Prologis suggests appointing valuation advisers as discussed at the meeting of 25 February 2026.
04-Mar-26	email (with attachment)	Open (letter is open, but the covering email states Confidential)	Segro	Prologis	Segro letter to Prologis letter of 27 February 2026. Segro state that they did not commit to provide Prologis with updated heads of Terms at the meeting of 25 February 2026 but instead committed to continue to explore the potential for a JV and revert with "principles" for a JV. Segro states that discussion son value should not include external valuers and best agreed between developers.
09-Mar-26	email (with attachment)	Open	Prologis	Segro	Prologis response to Segro letter of 4 March 2026 stating open to all credible alternatives to CA and request those are properly explored. Prologis requesting updated JV Heads of Terms which remain oustastding from December 2025. Prologis understand that Segro now intend to only produce "principles for a JV". These also remian outstanding. Prologis suggests that respective valuers should meet which might assist in progressing the alternatives.
09-Mar-26	email (with attachment)	P&C, WP	Prologis	Segro	Prologis response to Segro letter 13 February 2026. Prologis correcting mischaracterisations raised by Segro in 13 February 2026. Prologis request outstanding JV updated Heads of Terms from December 2025. Prologis sets out a timtable for Prologis & Segro to enage on the various workstreams.
13-Mar-26	email	Open	Prologis	Segro	Prologis providing valuers availability for a meeting.
20-Mar-26	email	StC	Segro	Prologis	Segro confirming Richard Aldrige will allow details to be shared of the option (on the basis Prologis & MAG reciprocate). Segro stating agreement with Cotton on overage but personal to Segro. Segro share plan of interests at Junction 24. Segro satating valuers are meeting.
09-Apr-26	email (with attachment)	Open	Prologis	Segro	Prologis requesting again that heads of terms requested 3 December 2025 remain outstanding. Prologis stating that JV still remains a viable alternative to compulsorty acquisition but limited progress from Segro to date. Prologis reminind Segro that if they were not going to provide detailed heads of terms then they had agreed to provide "principles for a JV" yet Prologis have still not receiced these from Segro. Prologis requested Aldridge terms. Prologis stated that alternative structurees (including a JV and access arrangements) have not yet properly been explored or progressed.
13-Apr-26	MEETING				Prologis & Segro
16-Apr-26	email	WP	Segro	Prologis	Segro response to Prologis letter of 9 April 26. Segro share summary of Aldridge Options.
18-May-26	email (with attachment)	P&C, WP	Prologis	Segro	Prologis provide summary of the Prologis & MAG option terms.