



CON/19/2007

LANDS TRIBUNAL ACT 1949

COMPENSATION – Compulsory purchase – acquisition of town centre site in connection with Metro scheme – planning assumptions – development costs - valuation methodology – valuation – Land Compensation Act 1961 Section 5 rule (2) – compensation awarded £1,165,683.06

IN THE MATTER of A NOTICE OF REFERENCE

BETWEEN

JUMBUK LIMITED

Claimant

and

**WEST MIDLANDS PASSENGER TRANSPORT
EXECUTIVE**

Respondent

**Re: Land at Birmingham Street/Porters Field,
Dudley, West Midlands**

Before: P R Francis FRICS

**Sitting at: Birmingham Combined Justice Centre,
Priory Courts, 33 Bull Street, Birmingham B4 6DS**

on

12-14 December 2007

Guy Roots QC, instructed by Hammonds, solicitors of Leeds, for the claimant
Roger Giles, instructed by WMPTE Legal Services, for the acquiring authority

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The following cases are referred to in this decision:

Spirerose Ltd v Transport for London (2007) LT ACQ/41/2005

Pointe Gourde Quarrying and Transport Co Ltd v Sub Intendent of Crown Lands [1947] AC 465

Waters v Welsh Development Agency [2004] 1 WLR 1304

IRC v Clay [1914] 3 KB 466

Snook v Somerset County Council [2004] RVR 254

DECISION

Introduction

1. This is a decision to determine the compensation payable to Jumbuk Ltd (the claimant) in respect of the compulsory acquisition of land formerly known as the Blue Acre Site, Birmingham Street, Dudley, West Midlands (the subject property) by West Midlands Passenger Transport Executive (WMPTE or the acquiring authority). The land was acquired under the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (the Order), and this is a reference by consent made, on 7 February 2007, in accordance with an Agreement dated 15 April 2004, as amended 6 November 2006.

2. Guy Roots QC appeared for the claimant and called Stuart Lindsay Hickman, a director of Hickman Stanmore Ltd (a sister company to the claimant) who gave evidence of fact. Expert evidence on planning was given by Keith Williams Dip TP Dip Proj Man MRTPI, of Stansgate Planning LLP; on Cost Planning and Quantity Surveying by Nicholas Dean MRICS of DBK Back Ltd, and on valuation by Andrew Nigel Cook BA FRICS IRRV of Lambert Smith Hampton. Roger Giles of counsel called Jane Louise Brooke-Smith BSc (Hons) Dip TP MRICS MRTPI of CSJ Brooke-Smith who gave expert planning evidence, Nigel Walker MRICS of Franklin and Andrews (Cost Planning and Quantity Surveying) and Philip White BSc FRICS of DTZ (Valuation).

Facts

3. A statement of agreed facts and issues was produced by the parties. From this, the evidence, and an inspection of the site and the surrounding area undertaken on 11 December 2007, I find the following facts. The subject land comprises an island site extending to 0.2 ha (0.5 acre) in an elevated and prominent position immediately adjacent to the bus station on the eastern periphery of Dudley Town Centre. The land, which slopes down from south to north, is in an area of mixed retail and commercial uses and is separated from Birdcage Walk (a pedestrianised area leading to the main town centre and which contains a Somerfield supermarket and a number of small secondary shop units), by Birmingham Street. The eastern boundary is formed by Porters Field which, towards the southern boundary, merges with Trindle Road, which then becomes King Street and contains the entrance to the Churchill Shopping Centre and Beatties Department Store about 50 metres south of the site.

4. The land was acquired by Blue Acres Ltd (an associated company of the claimant) on 2 March 1990, with the intention of developing it for appropriate town centre uses. Shortly after the purchase, the acquiring authority announced proposals to construct a tramway (referred to as the Midlands Metro) serving Dudley and the surrounding areas. A Parliamentary Bill (the Midland Metro No 2 Bill) was promoted to authorise the construction, and the compulsory acquisition of the land required. That requirement included the subject land, through which it was intended that the line should pass at below-ground level. Following an initial petition against the Bill, the claimant subsequently held discussions with the acquiring authority which

resulted in agreement being reached that the Metro would pass through the land at below basement level, and the claimants would be able to develop the land above. As a result the objection was withdrawn and the parties entered into a Memorandum of Agreement on 20 January 1992. As it was anticipated that it would be some time before the Metro development could proceed, the land was let to Britannia Car Parks Ltd initially for 2 years in November 1992, subject to a six month break clause, with the lease being excluded from the provisions of sections 24 & 28 of the Landlord and Tenant Act 1954. That lease has been periodically renewed. Blue Acres Ltd then appointed Seymore Harris Partnership, architects of Birmingham, who designed an 8,191 sq m six-storey office building with two levels of basement parking (124 vehicles), and provision for the Metro at lower ground and upper basement levels. Full planning permission was obtained on 12 September 1993.

5. Then, due principally to delays in obtaining the requisite funding, it became apparent that the Metro scheme would be delayed, and the land was transferred from Blue Acres to Jumbuk on 26 October 1994. The claimant began to formulate proposals for a revised mixed use development of the land without provision for the Metro and, despite notice to treat being served in 1997 the acquiring authority's powers eventually expired by effluxion of time in 2000. However, the scheme was revived soon afterwards, and in September 2001 the acquiring authority approached the claimant to acquire the land by agreement, rather than proceed with the previously proposed joint development. On 23 December 2002, the acquiring authority advised the claimant of its intention to apply for an Order under the Transport and Works Act 1992 (which it made on 16 April 2003) and following negotiations, the parties entered into an agreement that provided for the acquisition of the land, and a mechanism for the determination of the price if it could not be agreed.

6. The Agreement, which was subject to the Order being confirmed, was completed on 8 August 2005 (the valuation date for the purposes of this reference). It provided for a "First Payment", on completion, that was to amount to 90% of the buyer's estimate of the Value as if section 52 of the Lands Compensation Act 1973 applied. Clause 6 provides:

"6 SECOND PAYMENT

6.1 At any time within three to six months after the Completion Date, either party may make a reference to the Lands Tribunal in order that the Lands Tribunal shall determine the Value within the terms of section 1(5) of the Lands Tribunal Act 1949 and in so far as the Lands Tribunal considers it appropriate to do so in accordance with the compensation code applied by the Order it shall give due consideration to any section 17 Certificate.

6.2 In determining the Value the Lands Tribunal shall treat the Completion Date as the valuation date for assessing the Value.

6.3 If the Lands Tribunal determines the Value to be more than the First Payment, the Buyer shall pay the Second Payment to the Buyer within twenty Working Days of the date of determination of the Value by the Lands Tribunal.

6.4 It is agreed that if the Value is less than the First Payment, the Seller shall not be required to repay any part of the First Payment to the Buyer and shall be entitled to retain the First Payment absolutely.

6.5 Interest shall be payable upon the Second Payment from the Completion Date until the sum is paid to the Seller to be calculated under section 32 of the Land Compensation Act 1961.”

“Value”, as defined by the Agreement, means “...the sum which a Buyer would have had to pay to the Seller for the Property with vacant possession (except for the lease if it is still continuing on the Completion Date) if the Buyer had taken the steps to acquire the property compulsorily pursuant to the Enactments and possession had been taken by the buyer on the Completion Date.” It was agreed that that definition had the effect of requiring the reference land to be valued in accordance with rule (2) of section 5 of the Compulsory Purchase Act 1961. The Supplemental Agreement of 6 November 2006 had the effect of extending the time for submission of a notice of reference to the Lands Tribunal, that being made on 5 February 2007.

7. The lease referred to in the Agreement was the lease granted by the claimant to Britannia Car Parks Ltd on 4 November 2003 for 3 years at an annual rent of £21,750 (excluding VAT), and it was agreed that, for the purposes of redevelopment of the site, vacant possession could have been obtained. The lease was subsequently renewed for a further 3 years from November 2006.

Planning

8. It was agreed that the relevant planning policies at the valuation date were the Regional Spatial Strategy (RPG 11) and the Dudley Unitary Development Plan adopted in 1993. It was also agreed that the UDP was out of date in August 2005, and that the Revised Dudley Unitary Development Plan that was adopted shortly after the valuation date in October 2005 was an emerging plan that was well advanced, its proposals were already being used for development control purposes at the relevant date, and would therefore have carried significant weight.

9. The reference land falls within the Town Centre Development Block BO5, within the revised UDP to which Policy DTC2(xvi) applies and states that the existing mix of uses is satisfactory and is expected to remain. In the no-scheme world the existing uses of commercial, retail and residential development would therefore be acceptable, and it was agreed that a development along the lines set out in the claimant’s architects’ revised scheme (see below) would have received favourable consideration. Accordingly, the reference land falls within the definition accorded by section 16(3) of the 1961 Act, and the relevant assumptions as to planning permission are to be made.

The claim

10. On 15 January 2007 a formal claim was submitted by Jumbuk to WMPTE assessing the value of the subject land at £4,000,000 in accordance with section 5, rule (2) of the Land Compensation Act 1961, upon the assumption that full planning consent would have been granted at the valuation date on the basis of plans for a scheme of development that had been prepared by BBLB Architects Ltd (BBLB) in May 2006. Those plans followed a detailed

planning assessment undertaken by Stansgate Planning Consultants in March 2006, the draft of which had been discussed with the council's Planning Policy Manager, and which concluded that, in the no-scheme world, the site could support a mixed-use development comprising retail, leisure, offices and/or residential. The scheme as drawn, which included ground floor retail, basement servicing and parking with leisure and/or office uses on the upper floors, was costed by DBK Back Ltd, and it is upon those costings that a residual valuation was formulated.

11. Following the acquiring authority's response to the claim, and the reports filed by it in accordance with directions given by this Tribunal in a pre-trial review on 1 June 2007, a revised and re-costed scheme was prepared containing either a single major retail store unit, or a mall configuration with 12 smaller shop units on the ground floor, 69 parking spaces and servicing provision to the basement areas, and four upper floors of offices. A new residual valuation was undertaken, and the claim was reduced to £2.27 million. By the date of the hearing, and following meetings between the experts and consideration of the rebuttal report of the acquiring authority's valuer, the claimant's residual valuation was amended to £1,800,000.

12. The acquiring authority assessed the value at £754,000 being the (agreed) existing use value of the land as a car park (£580,000), together with a 30% uplift to reflect the hope of achieving the future development potential of the site. It was agreed that there were no appropriate valuation comparables that were available to assist the valuers.

Issues

13. It was agreed that the principal matter for determination was the value of the subject land at 8 August 2005 in accordance with section 5 rule (2) of the Land Compensation Act 1961, and in so doing, it is necessary to determine the following issues:

1. Whether full planning permission for the revised BBLB scheme would have been forthcoming at the valuation date, or whether only outline consent could have been anticipated.
2. Whether it was appropriate to value the land by means of a residual appraisal, or upon the basis of existing use plus hope value. If the former, whether the costings provided by the claimant's expert adequately reflected the requirement for a "landmark" building, whether the estimated rental values and anticipated occupation dates were achievable, and indeed whether a developer would have even considered undertaking a speculative development in the light of the state of the market in Dudley. The effects on value of other factors argued by the acquiring authority are also relevant. If the latter, whether it was correct to apply a percentage increase over the agreed existing use value to reflect hope value, or a reduction from the potential value of the completed development to reflect risk.

The question of pre-reference costs also falls to be resolved.

ISSUE 1: PLANNING

Planning: Claimant's case

14. Mr Hickman explained that he had been a director of Hickman Stanmore Ltd, one of a number of companies owned or controlled by his family, since 1975. That company, which trades as builders, developers and property agents, was appointed by the claimant to deal with many of its business interests throughout the UK, including matters relating to the reference land. Mr Hickman set out the factual background relating to Blue Acres' acquisition of the land, including the fact that, anticipating the opportunity to erect a multi-storey structure, a ground condition report was obtained in 1989. The site had been acquired on a speculative basis without any planning consent, but, he said, there had been discussions with the council over what may be achievable in accordance with the then adopted development plan. The development that was then anticipated was to a much smaller scale than the one to which they subsequently aspired following the later discussions and agreement with the council regarding the proposed joint development of the site to include a Metro station. He said that the building for which planning consent had been achieved in 1993 was to be a magnificent, "landmark" structure of ground-breaking design, that was to set a new standard for Dudley.

15. He went on to explain the delays that had subsequently occurred, and said the reason for letting the site for public car parking (for which consent had been achieved in December 1992) was to recoup some of the company's holding costs until the land could be developed, and that due to the Landlord and Tenant Act exclusion, there would never have been any problem obtaining vacant possession.

16. Mr Hickman said in cross-examination that in his view the BBLB drawings upon which the current valuation was based depicted a development that was equally of landmark status, but was scaled back somewhat and was of a design that reflected current thinking and building materials. Although there may be a difference in quality terms between the 1993 proposals and those used for the valuation exercise, he said the 2005 scheme was more than adequate for a landmark description to apply and was to a design that was more appropriate for the current market. The site was in a highly visible location, and certainly warranted something special.

17. As to the initial claim for £4m, Mr Hickman said that he had previously understood the 2005 Agreement to mean that the valuers would enter a friendly negotiation based upon a residual valuation of the land worked back from the anticipated profit from a development that would reflect the type of building for which the 1993 permission was obtained. However, he had subsequently taken advice, and had instructed BBLB to produce a smaller scheme that was more appropriate to the 2005 market, assumed a no-scheme world, and contained finishes that reflected current architectural thinking, and that would be more attractive to tenants.

18. Mr Williams is a partner in Stansgate Planning LLP of Stratford-upon-Avon, is a member of the Royal Town Planning Institute and of the Royal Institution of Chartered Surveyors (RICS) and has 37 years experience in Town and Country Planning matters. He said he was initially instructed to provide planning advice to the claimant in June 2002 and had

later prepared the planning assessment for the site (which reflected the fact that at the valuation date, the revised UDP was still emerging and had not yet been adopted, but whose policies were a material consideration in planning terms). The draft of the assessment had been discussed with the council, and its findings broadly agreed, before the final version was issued in September 2006. The policies of the 1993 UDP and the revised 2005 UDP were, he said, effectively similar, and the range of uses that he had concluded would be acceptable on the site would be the same at both dates. He thought that the mixed-use development as shown on the revised BBLB schematic drawings would have been acceptable to the local planning authority at the valuation date, and indeed would have been actively encouraged by the council bearing in mind the site's proximity to the town centre. The size and scale of the building together with its proposed external appearance and facing materials were appropriate, Mr Williams said, in this location, and such a landmark building would have been likely to encourage further investment in the area.

19. For the purposes of section 16 of the 1961 Act, the site being allocated in the statutory development plan for two or more uses, Mr Williams considered that full planning consent could reasonably have been expected to be granted, with no onerous conditions or requirements for the submission of further details on reserved matters. The plans as prepared, he thought, were more than adequate to satisfactorily depict the size, scale, massing, quantum and design principles for the proposed development, and were quite sufficient for a positive conclusion to be drawn in this hypothetical situation. However, he accepted that in the real world, as it would be unlikely for a developer to apply for outline permission, more information would be required for a full application to be favourably considered including illustrative drawings of all elevations, rather than just one, and a detailed design statement. That, in terms of fees, might well cost an additional £40 - £50,000, and could prevent the need for specific conditions or reserved matters, but even if further details were required before full consent was achieved, that exercise would not take long or create major difficulties, particularly as the site was not in a sensitive or conservation area. Nevertheless, for the purposes of establishing the principle in compensation terms, in his view, sufficient information had been provided for full consent.

20. As to what would constitute a landmark building, Mr Williams was referred to "*By Design; Urban design in the planning system: towards better practice*", a DTLR publication designed to promote higher standards in urban design. In it, "Landmark" was described as "A building or structure that stands out from its background by virtue of height, size or some other aspect of design". He said that, in his view, a 6 storey curtain wall clad building located on this particular highly visible site would undoubtedly be landmark, and he was satisfied that the design and proposed cladding were sufficient to justify that description. Whilst accepting that landmark and quality of design were not necessarily the same, Mr Williams pointed out another passage from that document, entitled "Place making", which said that it was necessary for judgments to be made as to what was feasible in terms of economic and market conditions. If too little weight was given to feasibility, the proposed development may fail commercially, and a developer would be likely to walk away if the cost of features required to put the landmark question beyond doubt made it unviable in economic terms.

21. In cross-examination, Mr Williams accepted that despite the land being located within an opportunity area, and one of 12 sites identified in the UDP for office development, there had

been no major developments of this nature within the town centre since 1995. Cavendish House, a large 1970's office building close to the Blue Acres site had also been empty for many years, and there was no sign of that building being refurbished or redeveloped. However, he said the subject land was the only site that was clear and ready to develop and he thought that a development along the lines of that depicted in the BBLB proposals would create significant rejuvenation of an area that he agreed was somewhat in the doldrums. The concerns that had been raised by Mrs Brooke-Smith in her initial report regarding access to the basement area for servicing had been addressed, Mr Williams said, to her satisfaction, and it was accepted that the only issue outstanding in that regard, and one which was not insurmountable, was the possibility that a Road Traffic Order might be needed to deal with moving an existing taxi rank.

Planning: Acquiring authority's case

22. Mrs Brooke-Smith produced a main report expressing the view that the revised BBLB proposals appeared to comply with the council's planning policies and national planning guidance, and it was reasonable to assume that the land could theoretically be developed for a mixed-use scheme comprising retail and office use along the lines of the claimant's proposals. On the balance of probabilities therefore, planning consent may well have been granted for such a development, but she was concerned that there was insufficient detail on the plans, particularly in respect of materials and regarding "a specific landmark feature" that she felt would be required. There were also concerns about access to the servicing area by articulated vehicles, and traffic congestion in Porters Field. She concluded therefore that there could be no absolute guarantee that full consent would be forthcoming, but outline approval with extensive reserved matters was more likely. By the time she produced her supplemental statement, the principal planning issues between the parties had been considerably narrowed, and the remaining concerns were restricted to her interpretation of "landmark", which in her opinion meant that any development should be of the highest design standard, and that would have a major impact upon development costs.

23. Whilst accepting that no major schemes had come forward in the town centre for many years, Mrs Brooke-Smith said the council aspired to, and would encourage high quality development in the area to counter the historic success of nearby Merry Hill. She was concerned that the BBLB drawings were somewhat mundane, and the design lacked the impact that would be required on such a high profile site. The 1993 proposals for which permission was granted contained landmark features, including a pointed spire, but there was nothing out of the ordinary in this proposal. Having expressed those reservations, she did say that she shared Mr Williams' optimism, and that, subject to agreement with the local planning authority on specifics, such a development was most definitely feasible – it was the principal that was agreed, but not the detail.

24. In cross-examination, Mrs Brooke-Smith agreed that it would be unlikely the council would demand such a complex design and expensive materials as to adversely affect the viability of the scheme, and she accepted that her statement that the "highest" quality design would be required was not supported by any evidence, and was her own interpretation of the council's policies. Similarly, her insistence that the building would need to achieve landmark status was not specifically referred to in the relevant policies. She also acknowledged that

there was nothing to suggest that that, in the real world, an applicant would not, through discussions and meetings with the council's planners, have done everything that was necessary to ensure that a full consent was secured at the valuation date, including the provision of a Design Brief Statement.

Planning: Conclusions

25. In his closing submissions, Mr Roots said that the test was not, as advanced by the acquiring authority, whether the revised BBLB drawings were sufficient to obtain a full planning consent, but whether, in the absence of the scheme and on the balance of probabilities, it can be concluded that full planning permission would have been obtained, at the valuation date for the form of development illustrated by those plans. I agree. It should be noted, Mr Roots said, that despite the argument that only outline consent could have been expected, it was not suggested either in Mr White's rebuttal valuation report, or was it put to Mr Cook, the claimant's valuer, in cross-examination that, if it was to be found that a residual valuation was the correct approach, he should have made an allowance to reflect the alleged uncertainties and delay that would inevitably result from an outline only consent being in place at the valuation date.

26. Mr Roots said that it was necessary, as Parliament had recognised, to make assumptions about the grant of planning permission, and there were two routes by which this could be done - the statutory route and the *Pointe Gourde* rule (*Pointe Gourde Quarrying and Transport Co Ltd v Sub Intendent of Crown Lands* [1947] AC 465). It was agreed, he said, that section 16(3) of the 1961 Act applied in this case, and that required a judgement to be made as to whether planning permission might reasonably have been expected to be granted. *Pointe Gourde* required a judgement to be made as to whether, on the balance of probabilities, planning permission would have been granted on the valuation date in the absence of the scheme. He referred to this Tribunal's decision in *Spirerose Ltd v Transport for London* (2007) LT ACQ/41/2005.

27. In *Spirerose*, (the President and Paul Francis FRICS) said, at para 66:

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

achieve that permission before putting the land on the market. On the assumed hypothesis, therefore, there would not at the date of valuation have been a mere prospect of planning permission. There would have been a determined planning application granting permission. If there were not a reasonable prospect of permission being granted, on the other hand, the realistic assumption would be that the hypothetical seller would not have courted a refusal by making an application, so that there could at the valuation date have been some hope value. Unless there is evidence to displace it, therefore, we think that, if at the valuation date on the balance of probabilities planning permission would have been granted for a particular development, such permission should be assumed for the purposes of valuation. In the present case, although we were referred in support of Mr Todd's hope value assessment to transactions in which land had been sold without planning permission but had later received it, we do not think that the evidence shows that a willing seller of the subject land would not have taken steps to ensure that the land had planning permission at the date of the assumed sale."

28. It seems to me that the circumstances here are to all intents and purposes the same, and there is no dispute between the parties that planning permission would have been achieved. The question is simply, would it have been full or outline permission. In my view, Mrs Brooke-Smith painted a somewhat exaggerated picture in terms of the landmark and highest quality issues (which I deal with more fully under the question of costings), and was unrealistic when it came to interpreting the BBLB plans. In cross-examination she conceded that there was nothing to suggest that an applicant, in the absence of the metro scheme, would not have done everything in its power to achieve full planning consent by the valuation date, and that it could be expected they would have held detailed discussions with the local planning authority to that end. I am satisfied from the evidence that the BBLB plans as presented were sufficient for the purposes of this determination, and represented a scheme that would have been entirely appropriate, in planning terms, for the subject site. I accept Mr Roots' submission that the acquiring authority's arguments that only outline permission could be assumed because the plans and costings that had been prepared in respect of this compensation claim were not sufficient to achieve full consent in the real world, are absurd. I do not think it realistic to expect the claimant, as appeared to be suggested by the acquiring authority, to have expended perhaps another £50,000 in professional fees in providing sufficient supplemental information to make the BBLB proposals into what would effectively be a full planning submission to prove the argument that applies in this hypothetical situation, especially bearing in mind the concessions that had been made by Mrs Brooke-Smith. As Mr Roots said, quite rightly in my view, even if more substantial plans, costings and a planning brief had been produced, that could well have served as a vehicle for more subjective debate.

29. This conclusion is sufficient to dispose of the first issue, but before turning to the evidence on construction costs, I deal briefly with a point raised in the acquiring authority's closing submissions which referred to the fact that the initial discussions on value related to a retail and residential scheme, which may or may not have been more valuable than the BBLB scheme that is being considered here. The claimant responded by saying that in an area where mixed-use developments were likely to receive favourable consideration, there could be a number of different alternatives, including proposals that include residential and that would almost certainly lead to a higher residual value. However, the possibility of a mixed residential/retail development, in terms of assessing compensation, was abandoned because it was felt that such a proposal might have raised a range of additional issues, such as the

proportion of affordable housing. The claimant contended that it had opted for a development that would have been infinitely more straightforward in planning terms, and would have led to a permission being obtained that contained no onerous conditions, and that would not have imposed abnormal costs, delays or uncertainties in the mind of the developer. In my judgment, the approach that the claimant has taken is entirely appropriate in the circumstances, and I agree that whilst some alternative development that included residential may well have produced a higher value, the line has to be drawn somewhere. I comment in more detail later on the viability or otherwise of the scheme as proposed and the effects on valuation, but for present purposes I am satisfied that it the claimant should not be criticised for adopting the BBLB scheme that was before me.

ISSUE 2: VALUATION

Methodology

30. Mr Cook is a Regional Board Director of the Lambert Smith Hampton Group, based in Birmingham, and has been involved with the subject land since being instructed by the claimant, prior to the reference in October 2005, to negotiate compensation. He explained that when his original valuation at £4 million was prepared, it was on the basis of a significantly different scheme, but his latest claim, at £1.8 million, was based upon the revised BBLB plans that had been prepared. He had assumed that detailed consent would have existed for that scheme at the valuation date, and in the light of the fact that no comparable evidence existed on parcels of land in the central Dudley area, felt that a residual valuation was the only constructive basis upon which a value could be determined (as had been accepted by the Tribunal in other cases). He said that the claimant had considered a number of different options, but the scheme that had been costed was deemed to be the most likely to work given the location and the market in Dudley, and could be achieved without undue delay or complications. It was for approximately 18,000 sq ft of retail at ground floor (either a single occupier or up to 16 smaller retail units in a mall configuration), and approximately 60,000 sq ft offices on four upper floors. His two revised appraisals, reflecting the different retail possibilities, are at Appendix 1 and 2 to this decision. Mr Cook said that the claimant had considered a scheme which included a residential element on one or more of the upper floors, in place of offices, but had concluded that despite such a proposal perhaps being more attractive to the marketplace and, indeed, more profitable, obtaining detailed consent might have been more complex (especially in respect of requirements for an affordable housing element). It was thus considered, he said, that a purely commercial scheme was more realistic and conservative.

31. Commenting on Mr White's valuation, Mr Cook said that whilst the existing use value was agreed at £580,000, he could not understand why Mr White had then simply added 30% to that figure to reflect hope value. He said it would be appropriate to attribute hope value where no planning permission existed at the valuation date, but any such value should be based upon a percentage of the difference between EUV and that potential development value to reflect risk. In this case, were it to be found that it was right to assume only outline consent and that full consent did not exist but was likely to be obtained, Mr Cook said it would be appropriate to take 75% of the additional development value. Based on the agreed EUV and his estimate of the full value of £1,800,000, the resultant figure would be $£1,220,000 \times 75\% + £580,000 =$

£1,495,000 [based upon the analysis in his rebuttal report which was based upon his then estimate of full value of £2 million, and showed £1,645,000].

32. Mr White is an Associate Director of DTZ's office in Birmingham, and was instructed by the acquiring authority to attempt to negotiate a purchase of the subject land by agreement, prior to a CPO, along with other sites in October 2001, although he has been acting for the claimant in respect of matters relating to the CPO scheme since 1993. He said that whilst the acquiring authority accepted in principle that the claimant's no-scheme world planning assumptions were reasonable, he had been instructed to assume, in the valuation prepared in connection with this reference, that only outline planning permission existed at the valuation date. He said that prior to the notice of reference he had valued the subject land at £500,000 but had been instructed, in respect of the claimant's request for a 90% advance payment, to offer £225,000 in October 2006 which, he admitted, implied a valuation of £250,000. His valuation before the Tribunal was £754,000.

33. He said that it was safest to value the site as an investment, on the basis of its existing use value which was agreed at £580,000, and allow an arbitrary addition to reflect its hope value. A residual valuation was not appropriate, he said, because realistically commencement of development would be so far into the future as to make the simple addition of an element of hope value the correct methodology. In cross-examination, Mr White accepted that his 30% increase over existing use value was not a scientific analysis, but gave the example of the sort of additional value that might be attributable to agricultural land on the edge of a town where planning consent did not exist, but development in the future could be anticipated. However, he accepted that in this instance, planning consent had been granted (although he thought a minimum of 12 months would be needed to get approval of reserved matters), the site was to all intents and purposes cleared, and that there would be no difficulty obtaining vacant possession. But, he stressed that, even if it had to be assumed that full planning permission existed at the valuation date, his view of value, and thus his valuation methodology, would not be affected because of his concerns over timing, potential void periods due to the prevailing market conditions in Dudley, the need to deal with section 106 agreements and the requirement that there may be to move the existing tax rank. He was also concerned that an updated ground condition report would be needed, not because the substrata was likely to have changed, but in terms of possible changes in environmental legislation. A developer would not, therefore, entertain purchasing the site with a view to developing it in the short term.

34. Mr Giles submitted that in order for the Tribunal to determine a fair financial equivalent for the land acquired (see *Waters v Welsh Development Agency* [2004] 1 WLR 1304), it was necessary to take into account the reality of the market place at the valuation date. As was said in *IRC v Clay* [1914] 3 KB 466, one is concerned with "...the expectations of properly qualified persons who have taken pains to inform themselves of all particulars ascertainable about the property, and its capabilities, the demand for it, and the likely buyers..." Those informatives included the decline in the town centre that Mr White had referred to, the fact that no office development had been undertaken there for many years, the low rentals being achieved in the older office buildings such as Falcon House, the fact that Cavendish House was still lying empty, the council's desire to encourage residential rather than office development and the fact that the proposed development did not appear to be of the required landmark status. Mr Giles said that, taking all those factors into account, a developer would be most unlikely to be

interested in pursuing such a scheme, and that a small addition to the EUV to reflect future hope value was the appropriate route to take in valuation terms.

35. Mr Roots submitted that the absence of major development in Dudley town centre should not, as suggested by the acquiring authority, lead to a conclusion that a developer would have taken the view that there would be no interest in office and retail floorspace on this centrally located site. It was right next to the main bus station and on the edge of the principal shopping centre, had no development constraints and had an assumed full planning consent. The market was strong in 2005, and although the ADF had not been published at the valuation date, the research from which it was produced had been done in 2004. It concluded that there was significant interest from the private sector in investing in Dudley, confidence was high and there was real optimism in key commercial sectors. Whilst it was accepted that the ADF also said the town centre was not expected to have a large scale private office function, it did not follow that individual sites such as this would not have been suitable for, and developed as, such a scheme. In the circumstances, he said, it was likely that developers would be in the market, and in order to assess what they could afford to pay for the site, would need to undertake a residual appraisal. Mr Cook's approach to valuation was therefore correct.

36. I accept that in determining the value of a site which (as I have found) is deemed to have the benefit of full planning consent for comprehensive development at the valuation date, it is necessary, in the absence of suitable comparables, for a valuer to undertake a residual appraisal to reach a conclusion as to whether or not that scheme is viable in economic terms and, employing relevant and appropriate inputs, determining what is left over to purchase the land after all costs and an acceptable level of profit have been taken into account. It is only where no planning consent exists, but where there is a chance, in the very long term that it might be achieved, that Mr White's adopted methodology may be deemed appropriate. However, the acquiring authority has acknowledged that planning permission would have been granted by the valuation date (albeit that they say it would only be in outline), and there is therefore much more certainty that, in the relatively near future, some form of development will occur. In that case, Mr Cook's alternative assessment of hope value could be appropriate. Nevertheless, as I have concluded that full planning consent for the BBLB scheme would have been in place at the valuation date, it is Mr Cook's principal methodology that must prevail.

37. This Tribunal has said on many occasions that a valuation by reference to comparable transactions will usually provide the best evidence of open market value, and is to be preferred to a residual valuation (see, for instance, *Snook v Somerset County Council* [2004] RVR 254 at para 30). As was indicated there, the smallest adjustments to sensitive inputs can make a significant difference to the end value, and great care is therefore needed in analysing the inputs upon which the valuation relies. Thus, in concluding that the production of a residual appraisal was appropriate, and indeed necessary in this instance, I need to consider carefully the inputs that Mr Cook has made, in the light of his comments, and those of Mr White in rebuttal. The item having by far the largest single effect was the projected development cost, and I turn to that first.

Residual valuation inputs: Development costs

38. A considerable body of evidence was adduced by Mr Dean and Mr Walker, and after various adjustments, amendments and some areas of agreement, a Scott schedule summarising the outstanding differences was produced, this indicating a difference between them of some £1.568 million. In the interests of brevity, I deal with the principal areas of disagreement on cost issues and my conclusions after first summarising the experts' approaches.

39. Mr Dean is a chartered quantity surveyor and is Cost Planning Director of DBK Back, responsible for a team of cost planners who provide early cost advice to commercial property developers and other clients. The BBLB drawings and the pre-acquisition ground report upon which he based his detailed development costings were typical, he said, of what was provided by clients in bid situations. He explained that his firm relied upon its own cost information database, which was compiled on tender information from previous quotes, rather than from Spons pricing index that he believed had been relied upon by Mr Walker, and which historically tended to show higher costs. The information was based upon the costs and prices relevant at August 2007, but were factored back to 3rd quarter 2005 using the Building Cost Information Service (BCIS) 'All In Tender Price Index'. Mr Dean's original cost model (reference Nr 3B) was produced in August 2007, but following meetings and discussions with Mr Walker, a revised model was produced (reference Nr 3C) in September 2007. That then formed the basis for two further appraisals: Appraisal A which assumed the upper four floors were fully fitted out as offices and contained a goods lift; the ground floor was designed for a single retail unit with the basement utilised for parking and servicing. The total projected cost was £9,788,449. Appraisal B allowed a further £340,000 on the assumption that the ground floor was finished to provide multi-occupier retail in mall format – total cost £10,165,449 at Q3 2007, thence amended to £10,161,697 to reflect what he described as "erroneous balancing costs". Appraisal B became the basis for further discussions and narrowing of issues, and a final revised schedule was included in Mr Dean's rebuttal report of 1 November 2007 showing a total cost of £10,340,461, which was then reduced by 9.43% to give a figure for August 2005 of £9,365,356.

40. Mr Walker is Projects Director for Franklin and Andrews, and has 30 years experience in cost planning matters. He had been instructed to analyse Mr Dean's cost model rather than produce a separate one of his own. In his review of Mr Dean's first report, he concluded that the costs for constructing a scheme that would accord with the council's requirements for a landmark building of very high quality had been underestimated by some £2.3 million (27.1%). The main differences were his opinion that Mr Dean had applied cost rates that were too low on a large number of items, he had not allowed for materials and finishes of sufficient quality and there were some elements that had not been included at all. In providing his own costings, Mr Walker said he referred to his firm's own cost database and, as a benchmark, to Spons Guide. In response to Mr Dean's adjusted cost model, Mr Walker reduced the difference to £1.75 million and by the time the Scott Schedule was produced immediately prior to the hearing, the difference became £1,568,950. His application of costs, he said, reflected his understanding of the planners' requirements, as set out by Mrs Brooke-Smith, but he accepted that, if his figures were right, the scheme would not be viable. However, he conceded during cross-examination that, in his view, it would be perfectly possible for a development based upon BBLB's proposals to be constructed within Mr Dean's cost framework, and if he were

acting for a client proposing to build such a scheme, he would do all that he could to ensure that, in terms of costs, it would be economically viable (that being described as “value engineering”).

41. The items upon which the experts failed to agree, as defined in the Scott Schedule can be summarised thus:

ITEM	Additional cost per Acquiring Authority	Comments
Contamination	£82,800	
Piling	£80,769	
Drainage abnormalities	£20,710	
Off site works	£17,852	
Balustrading (retail area)	£2,700	
Revolving drum door	£30,000	Since allowed for by Mr Cook in development appraisal
Curtain walling	£311,690	
Comfort cooling to offices	£114,125	
Mechanical installation – basement car park	£72,276	
External electrical works	-£10,000	
Landing works to staircase	£5,000	
Electrical installation in basement	£85,590	
Goods lift	£50,000	Since included in Mr Cook’s development appraisal
Sprinklers to car park	£85,590	
Terrace to 3 rd & 4 th floor roofs	£53,480	
Balustrade to roof terraces	£43,750	
Site investigation survey	£25,000	
Grout of mine workings	£25,000	

42. Contamination. Mr Walker said that he had allowed a large contingency for the fact that the site had been used as a car park for many years, and there may be oil contamination of the sub soil beneath the existing porous tarmac surface. Mr Dean had allowed only £10,000 for clearing the top surface of the site as, if the old tarmac was not re-used in the construction process, it could be recycled and sold in the market (as verified upon enquiry with a contractor). Mr Walker's allowance, he said, was on the basis of clearing heavily contaminated soil which would not be the case here. I agree with Mr Dean, and consider Mr Walker's estimate to be too high.

43. Piling. The difference between the experts was that Mr Walker had based his costs on 4 piles per node, and Mr Dean had allowed for 3. They had agreed the depth of piling that was required. Mr Walker had been particularly generous with his allowance as he was concerned there was not an up to date ground report. Mr Dean explained that the allowances he had made were adequate for a building of the size proposed and reflected the encouraging findings in the ground report that had been obtained by the claimant when it purchased the land. I accept Mr Deans argument, particularly as he explained there was also included a contingency of £117,500 for contiguous piling (to prevent subsidence of adjacent roadways) which may not even be needed.

44. Drainage abnormalities. Mr Walker had allowed an additional contingency for unforeseen problems that might be encountered in connecting to existing mains services. I accept Mr Dean's explanation that bearing in mind the town-centre location of the site, and the availability of substantial mains services immediately adjacent, no such additional contingency would be needed.

45. Off site works. This was purely a case of a higher figure, based upon a price per square metre, being used by Mr Walker. Again, I see no reason to dispute Mr Dean's assessment.

46. Curtain walling. The greatest area of disagreement related to this item. Mr Dean had allowed for "stick system" glazed curtain walling in accordance with the BBLB indicative elevation drawing and, following discussions with Mr Walker conceded that the extra cost of a solar coating and bris-soleil (projecting features to provide shade) should be added. He said that whilst the costings he had allowed were not specifically related to a landmark finish, that description was in itself subjective, and the materials he had chosen were substantially more expensive than brick or rendered finishes, and were adequate for a building in this location. Mr Walker was of the view that Mr Dean's allowance was sufficient for a typical speculative development, but not for the required landmark status. He had allowed for much higher quality facings that would be aesthetically pleasing, and would be a feature of the building. In fact, he said, that comment applied to the quality of finishes throughout the building, and was the principal reason his estimates were so much higher.

47. As I indicated in paragraph 28 above, I consider that the acquiring authority has made too much of the "landmark" and "highest quality" issues and, in my judgment, the proposals set out in the BBLB plans indicated a scheme that would be appropriate for the site. I accept Mr Dean's explanation that the choice of cladding materials he costed was appropriate for a high quality building in this particular location. In my judgment, a requirement for materials and

finishes of the quality suggested by Mr Walker would be out of all proportion to what was necessary, and the costs of providing them would be, as indeed was the respondent's case, sufficient to prevent any such development being economically viable, bearing in mind the likely rental levels achievable in this area. Mr Walker's proposed standards of materials, fit out and finishes would, I think, be more appropriate for a highly sensitive site in a city centre or conservation area. I therefore accept Mr Dean's evidence on this issue, and indeed, the same applies to the differences on comfort cooling, mechanical and electrical installations, sprinklers to car park (where I accept the argument that that would not have been a requirement in 2005 whereas it might now), and the terracing/balustrading to the third and fourth floor roofs (that were originally included where those floors were to be used for leisure purposes). Mr Dean said in his rebuttal report that the scheme he had costed should be considered in the context of the current Dudley property market and that from a design perspective the proposals would excel in that location, and I agree with that view.

48. I am also satisfied that Mr Dean quite reasonably accepted the original site survey, and do not think therefore that Mr Walker's allowances totalling £50,000 for a new site survey and possible grouting of old mine workings was necessary.

49. As to the "non-cost items" in the Scott Schedule which amounted to almost one-third of the total difference between the experts, Mr Walker had allowed a significant sum for preliminaries, and contingencies at 5% against Mr Dean's 3% and additional design fees. I am satisfied that, as Mr Dean pointed out in his rebuttal report, the majority of those costs related to Mr Walker's higher unit costs and allowances for risk due to his contention that the plans upon which Mr Dean's estimates were based were insufficient for an accurate cost plan to be created. I accept what Mr Roots said about this in his closing submissions, that the claimant has never contended that that the amount of detail in the cost plan would be sufficient for the construction phase of a real development proposal, and that a prospective purchaser of the land would take a view on whether the projected costs were sufficient. There was certainly no evidence that it would be necessary for those extra non-works costs to be regarded as realistic costs of the development, or that it would be necessary to incur them.

50. This leaves a couple of smaller items which I consider to be of little consequence in the overall scheme of things, and therefore conclude that Mr Dean's costings, adjusted to Q3 2005 form a satisfactory basis upon which Mr Cook could build up his residual valuation, to which I now turn.

Residual valuation: Other factors

51. In the course of his oral evidence, Mr Cook produced a number of sensitivity analyses that, he said, proved his figure was realistic even if, for instance, any pre-lets of individual floors or subsequent lettings took longer than anticipated to achieve, or rental values were less than he had suggested. He pointed out that the headline rents that had been achieved in the locality, and upon which he based his rental values, were agreed by Mr White, but it was the question of likely demand upon which they were diametrically opposed. Mr Cook said that it was accepted that Dudley had suffered in the 1980s when the nearby Merry Hill shopping and office development was constructed, and that there had been little commercial development in

the town centre for many years. However, he said that in recent years there had been signs of increasing investor and occupier confidence in the town centre and its immediate environs. Castlegate, a 76,000 sq ft office leisure and hotel development, had been constructed and let between 2002 and 2004, just over half a mile away from the subject land. A 22,000 sq ft unit had been let to Rentokil at £13.60 per sq ft, and a 27,800 sq ft unit let to Travel Lodge for a reservation centre, that having been subsequently assigned to Rentokil also. By 2004, office rentals being achieved there were £16.15 per sq ft. Office rentals being achieved for large floors in Waterfront Business Park, Merry Hill in 2002 were £14.50 per sq ft. Mr Cook also considered rents being achieved in the older, more basic, office buildings in Dudley (approximately £9 per sq ft), but said they were not at all comparable with what was proposed for the site. Research into rental levels on similar developments over a wide area including Oldbury, Wolverhampton and Brierley Hill lead him to the conclusion that, at the valuation date, a headline figure of £15 per sq ft would have been readily achievable at the proposed development.

52. Mr Cook said that the report published by Sir Michael Lyons in 2004, recommending that the government move 20,000 jobs away from London and the South East by 2010 had been accepted, and in it Dudley was one of 25 locations in the top quartile for potential relocation of call centre and back-office functions. He also referred to favourable reports in the Estates Gazette in March 2005, including the fact that Dudley had been identified as the most sought after town in the Black Country for office space. The reason why there had been no major office development within the town centre area, despite a number of sites being identified in the UDP, was because none of them, except the subject land which was now, of course, blighted by the Metro scheme, were cleared and “ready to go”. Several sites had complications and, in the fact that the nearby Cavendish House had not been refurbished despite having been acquired by a developer for that purpose, was an unresolved mystery.

53. In terms of retail demand, Mr Cook admitted that the principal big-name occupiers would now look to Merry Hill rather than Dudley town centre, but said that his research revealed interest from a large number of small/medium sized retailers who would be keen to take the smaller mall units, and some larger occupiers who, he thought, would consider taking the whole, including New Look, Primark, Peacocks, TK Maxx, JJB Sports and T J Hughes. There were few vacant shop units in the vicinity either at the valuation date or now, and with the development being right opposite the Churchill Centre, and having the additional business to be created by the 60,000 sq ft office floors, he thought there would be an excellent take up. Mr Cook produced appendices detailing a large number of retail transactions during the relevant period both in Dudley, and in nearby shopping centres, and concluded that achievable rentals for smaller units would be £36 per sq ft in terms of Zone A (ITZA), (which was significantly lower than passing rents in the Churchill Centre) or for a single larger unit £15 per sq ft ITZA. However, if the configuration was to be for smaller units, he noted that the additional construction costs, per Mr Dean, would be some £377,000, and he took this into account in his appraisal.

54. As to take-up, Mr Cook said that a prospective developer would reasonably require a pre-let on one of the office floors (presumably the first) before the building works would commence, with the second and third floors letting 6 months after completion of the construction, and the fourth floor 18 months afterwards. In all cases, he anticipated a nine-

month rent-free period as an incentive and to cover fitting out costs. As to the retail units, if let to a single occupier, a 9 month rent-free was appropriate, but if let as mall units 6 months rent-free. Whichever configuration was adopted, he said that he anticipated all units being let within 6 months of the date of building completion. Car parking spaces in the basement, he said, could be let for £1,000 pa each, again within 6 months of completion.

55. Mr Cook said that his research and knowledge of the investment market led him to the view that an investor would expect a 6.5% return on the office and retail lettings, and 7.5% on the car parking income. As to the other appraisal inputs, he said he had adopted a profit on gross development value of 15%, which equated to 18.25% on cost. Whilst accepting that most developers work to 15% on cost, he said that he needed to acknowledge the potential risks in the assumption that only 1 office floor and none of the retail units would be pre-let, and the fact that there was “not much going on in Dudley at the time”. Mr Cook assumed the building works would commence 9 months after completion of the site purchase, with a development phase of 12 months. However, he said that those timescales were not critical as there was the buffer of the higher than average anticipated end-profit, and the fact that additional interest costs on capital would not be significant if there were some slippage. Finally, he assumed the development would be sold in December 2008, when the building was fully let.

56. Regarding his lately produced sensitivity analyses, Mr Cook said that he had performed a number of recalculations that assumed variations including reduced rental values, extended rent free periods and initial letting times, and outward movement in yields. Keeping his £1.8 m land value as a fixed sum, he said that, for instance, if the office rentals were reduced by 50p per sq ft and all other inputs remained the same (he assumed no slippage to retail rents), profit on cost would become 14.6%; if there were a 12 month delay in letting the upper floors of offices, but again all other parameters the same, profit on cost became 14.1%; if both the rental returns were reduced by 50p per sq ft, and the yield moved out by 0.25%, then profit on cost became 10.56%. Then, in what he described as a worst-case scenario, he assumed downward movement to rental predictions, longer to let and an increased yield, the profit became 6.77% on cost. A final re-analysis assumed a pre-let of the whole, but with the pre-construction period increased to 2.5 years. Keeping to a 15% profit on cost, gave a land value of £1.97 million, although he accepted that on a complete pre-let, a developer would probably be considering a much reduced profit. Bearing all these in mind, Mr Cook said that it was clear that his estimate of land value was supportable even if his original assumptions proved too optimistic.

57. In cross-examination, Mr Cook accepted that on other developments he had used as comparables, parking was free to the occupants but with the subject development being so close to the town centre and the main transport hub, he thought they would have additional value. He had referred in his report to the Area Development Framework (ADF), that was adopted as supplementary planning guidance (to the adopted 2005 UDP) in December 2005, but which it was accepted was an emerging document at the valuation date. The ADF, he said, pointed out that there was “significant interest from the private sector in investing in Dudley”, and that “there are clear indicators that a window of opportunity exists to deliver substantial change through market led investment”. However, Mr Cook accepted that the same document also said that it was necessary to accept that the town was unlikely to see any large scale office

function in the foreseeable future, and that the reality of life within the conurbation meant emphasis should shift towards promoting Dudley for high quality urban living with strengthened retail, leisure and service facilities to support that population. Nevertheless, he said he thought concentration on such uses would not be exclusive, and particularly bearing in mind that Dudley MBC itself was looking for new offices, felt that a developer would still consider that there was a good opportunity for such a mixed office and retail development. This was one single development he said, against hundreds of acres of offices at Merry Hill and Waterfront Park, and it should also be remembered that the market was particularly optimistic during 2005.

58. It was put to Mr Cook that on his assessment, the subject land worked out at £3.6m per acre and that there was no evidence to support such high values in the area. However, he said that that was not a fair argument as you could have a situation where there was a proposal to construct a high rise development in the centre of London, on a very small site, where the value on that basis might be £20m per acre.

59. Mr White said he accepted that Mr Cook's residual appraisal had been very thorough, and if all his input assumptions were correct the value he had ascribed would be appropriate (assuming full planning permission had been granted). However, his main reservations related to timing. Even Mr Cook's sensitivity analyses did not reflect the concerns that he had as they only allowed for 50p per sq ft reduction in achieved office rentals, insufficient flexibility as to letting timescales and just one quarter-point movement in the capitalisation rate. Whilst he felt that £15 per sq ft for the offices was probably achievable in the light of the rentals obtained on the Castlegate development, he was of the view that parking facilities would have to be included rather than, as Mr Cook had proposed, lettable at a further £1,000 per space. Also, more attractive incentives would have to be offered, and the market would need to be thoroughly tested before the developer would risk committing to the development. However much "wow factor" the proposed building possessed, he was not sure that Dudley town centre had the ability to attract tenants to relocate to those surroundings. As to the shops, he said that he thought a single occupier might be attracted to the ground floor, although he was not sure that the additional workers from the upper floors would provide sufficient extra incentive, and in any event it would be necessary to provide a pedestrian crossing over Birmingham Street to attract shoppers from the main central area. The crucial point, in respect of timescales, Mr White said, was his view that a developer would most certainly not commit to building on the strength of the letting of only one office floor. The consequences of not achieving lettings of the rest of the building within the anticipated timescales would be catastrophic in economic and projected profitability terms.

60. Mr White also referred to the Black Country Study that was commissioned around the valuation date, that being prepared by the Black Country Consortium (a sub-regional partnership for the Metropolitan Boroughs of Sandwell, Dudley, Walsall and Wolverhampton) to set a vision to regenerate the Black Country over the next 30 years. He said that the report concluded that the town of Dudley had been suffering from a net outward migration of population for many years, that its town centre as a retail and main hub will not recover from the decline caused by the development of Merry Hill, and that the other main Metropolitan Boroughs were identified as suitable for and capable of growth as retail and commercial centres. It also said that Dudley town centre would only be able to concentrate on its history

and be primarily a centre for tourism and increasing residential development rather than compete with other four centres for retail and offices. In the light of those conclusions, Mr White said that it would be unlikely, in the no-scheme world, that the subject land would have been brought forward for development in the foreseeable future as envisaged by the claimant, and that a developer would not risk building such a scheme on a speculative basis. If there was a demand, he said, for large amounts of office space, it was likely that competing centres such as Merry Hill would be more favourably considered.

Residual valuation: Conclusions

61. The claimant said that the revised BBLB schematic drawings were for a scheme that, in this hypothetical situation, was considered to be appropriate and achievable without undue delay or complications, and that whilst one that allowed for residential content on some or all of the upper floors could well prove much more profitable, obtaining planning consent for that might be more complex (particularly in respect of affordable housing requirements). It was thus considered that the valuation based, as it was, upon a purely commercial development was realistic and conservative. I find this to be an extremely persuasive argument in support of the claimant's case. There is no doubt in my mind that even if I found in favour of the authority's case that if full planning permission existed for a mixed retail and commercial scheme it would be unlikely to be built because of lack of demand, another scheme would have come forward that was potentially even more valuable.

62. With no residual appraisal containing contradictory evidence on the key inputs having been produced by Mr White, and being satisfied that Mr Cook has undertaken a thoroughly researched and comprehensive valuation exercise, there are only a few areas where I consider adjustments should be made. Noting Mr White's agreement that a single occupier is most likely for the retail area, it is Mr Cook's appraisal A that forms the basis for adjusting inputs where they are necessary.

63. I have, of course, already accepted the development costings of Mr Dean, and his figure should be used as the constituent input in that part of the residual appraisal. As to the rest of the inputs, in my judgment, the acquiring authority was right to have its major concerns over projected timescales but before looking at that element in detail, I think it would be helpful here to comment upon Mr Cook's sensitivity analyses. Whilst, as will become apparent, I have found the production of revised calculations that assume less satisfactory outcomes extremely helpful, I have to confess to being surprised at his methodology in these; to keep the land value as a fixed input, thus meaning that adjustments to letting timescales, rents achieved etc alter the profit element, seems to me (and indeed, as submitted by Mr Giles) to be somewhat odd. It is convention to anticipate a profit on cost of 15% (not profit on gross development value) and I would expect a valuer to keep this as a fixed input, with any sensitivity adjustments going to what is left over to acquire the land. That is the approach I shall take in analysing his inputs.

64. Looking firstly at projected revenue, whilst anticipated rent levels appear to be well supported by the comparable transactions that Mr Cook referred to, I am persuaded by Mr White's argument that additional income from car parking spaces could not realistically be expected if the rentals for the offices are set at the levels shown. I therefore deduct income of

£69,000 pa from the revenue section. My principal area of concern is timescales for achieving lettings of the upper office floors, and although I do think that a developer would proceed on the basis of a pre-let of one office floor, in the light of all the evidence relating to the market and bearing in mind the somewhat run-down appearance of the immediate environs, I suspect that Mr Cook appears to have been somewhat optimistic in his letting predictions in his initial valuation. In the sensitivity analysis produced during his evidence (page 1277 of the trial bundle, and headed “ANC18”), Mr Cook assumed a delay in letting the upper floors (and the eventual sale of the investment) of 12 months. In my judgment, this is a much more realistic forecast.

65. I am satisfied that the remaining inputs are supported by the evidence, or have not been challenged by the acquiring authority, and the effect of reducing the rental income by £69,000 per annum, extending the projected lettings of the remaining office floors by 12 months, and adopting a fixed 15% profit on costs, produces a residual land value of £1,149,527 – say £1,150,000. I consider, on the basis of the evidence before me, that that is the price a prospective purchaser would be prepared to pay for the subject land at the valuation date.

Pre-reference costs

66. The claimant, in its statement of case and in an appendix to Mr Cook’s report, submitted details of its claim for pre-reference costs incurred in assembling the claim. These amounted to £15,683.06 and the claim was neither challenged in principle or amount by the acquiring authority. I therefore determine that that sum should be paid in addition to the value of the land.

67. This decision deals with the substantive issues in this case, and I determine that the acquiring authority shall pay the claimant compensation in the sum of £1,165,683.06. The decision will take effect when the question of costs has been determined, and not before. A letter is enclosed setting out the procedure for submissions in writing.

DATED 4 February 2008

(Signed)

P R Francis FRICS

LAMBERT SMITH HAMPTON
BLUE ACRES DEVELOPMENT
APPRAISAL A (Nov 2007 revision)

TIMESCALE (Duration in months)

Part 1	Mths	Commences
Phase Start Date		Aug 2005
Purchase	1	Aug 2005
Pre-Construction	8	Sep 2005
Construction	12	May 2006
Letting	9	May 2007
Income Flow	12	Feb 2008
Part Length	42	
Project Length	43	

ASSUMPTIONS

CONSTRUCTION

1. Construction Costs paid on S-Curve
2. Professional Fees are related to Construction

DISPOSAL

1. Purchaser's Costs based on Gross Capitalisation
2. Purchaser's Costs Deducted from Sale (not Added to Costs)
3. Sales Fees based on Sales plus Net Capitalisation
4. Sales Fees Added to Cost (not Deducted from Sale)

INTEREST

1. Single rates of Interest adopted for all Payments/Receipts: Debit Rate 7.00% Credit Rate 4.00%
2. Interest Compounded Quarterly and Charged Monthly
3. Same rate of interest in each DCF period
4. Interest Not calculated on items in final DCF period
5. Interest Not included in IRR calculations
6. Effective Rates of Interest used

INFLATION/GROWTH

Inflation Sets
Set Number Set 1
Infl. Rate % 4.00

CASHFLOW

1. Payments In Arrears
2. Receipts In Advance
3. Initial IRR guess rate 8.00%

VALUATION

Tables are Annually in Arrears
Tenant's rent valued as true income stream

RESIDUAL TARGETS

Part 1 Profit on GDV 15%

**LAMBERT SMITH HAMPTON
BLUE ACRES DEVELOPMENT
APPRAISAL A (Nov 2007 revision)**

Appraisal Summary for Part 1

REVENUE

Rental Area Summary	ft²	Rate ft²	Grs Rent pa
retail ground	18,103	£15.00	271,545
first offices	19,298	£15.00	289,470
second offices	16,650	£15.00	249,750
third offices	13,184	£15.00	197,760
fourth + mezz offices	11,516	£15.00	172,740
parking spaces	69 units at	£1,000	69,000
	<u>78,751</u>		<u>1,250,265</u>

Investment Valuation

			Yield	Factor	Cap.Rent
retail ground					
Valuation Rent	271,545	YP @	6.5000%	15.3846	4,177,615
first offices					
Valuation Rent	289,470	YP @	6.5000%	15.3846	4,453,385
second offices					
Valuation Rent	249,750	YP @	6.5000%	15.3846	3,842,308
third offices					
Valuation Rent	197,760	YP @	6.5000%	15.3846	3,042,462
fourth + mezz offices					
Market Rent	172,740	YP @	6.5000%	15.3846	
(9 Mths Rent Free)		PV 9m @	6.5000%	0.9539	2,534,938
parking spaces					
Valuation Rent	69,000	YP @	7.5000%	13.3333	920,000
					18,970,707

NET CAPITALISATION

Purchaser's Costs	5.75%	-1,090,816			18,970,707
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NET DEVELOPMENT VALUE

17,879,892

Income from Tenants

parking spaces		69,000			
retail ground		67,886			
first offices		217,103			
second offices		62,438			
Third offices		49,440			
					465,866

ADDITIONAL REVENUE

car pk income to construction		22,000			
					22,000

NET REALISATION

18,367,758

OUTLAY

ACQUISITION COSTS

Acquisition price		1,797,989			
Stamp Duty	4.00%	71,920			
Acquisition Agent Fees	1.00%	17,980			
Acquisition Legal Fees	0.50%	8,990			
Town Planning		17,000			
Building regs		40,000			
					1,953,879

**LAMBERT SMITH HAMPTON
BLUE ACRES DEVELOPMENT
APPRAISAL A (Nov 2007 revision)**

CONSTRUCTION COSTS

Summary	ft²	Rate ft²	Costs	
Construction cost per dbk back			10,248,866	
S106/238 costs per DWP			30,000	
				10,278,866

Other Construction

PROFESSIONAL FEES

prof fees over 6% DBK incl		6.50%	666,176	
				666,176

MARKETING

Marketing			50,000	
Letting Agent Fees		10.00%	125,027	
Letting Legal Fees			62,513	
				237,540

DISPOSAL FEES

Sales Agent Fees		1.00%	178,799	
Sales Legal Fees		0.50%	89,399	
				268,198

FINANCE

Timescale	Duration	Commences
Purchase	1	Aug 2005
Pre-Construction	8	Sep 2005
Construction	12	May 2006
Letting	9	May 2007
Income Flow	12	Feb 2008
Total Duration	42	

Debit Rate 7.000% Credit Rate 4.000% (Effective)

Land	232,650	
Building	341,539	
Letting Void	720,897	
Other	822,406	
Total Finance Cost		2,117,493

TOTAL COSTS

15,522,152

PROFIT

2,845,606

Performance Measures

Profit on Costs%	18.33%
Profit on GDV%	15.00%
Profit on NDV%	15.92%
Development Yield	8.05%
Equivalent Yield (Normal)	6.51%
Equivalent Yield (True)	6.78%
IRR %	15.18%
Rent cover	2 yrs 3 mths
Profit Erosion (finance rate (7.000%))	2 yrs 5 mths

LAMBERT SMITH HAMPTON
BLUE ACRES DEVELOPMENT
APPRAISAL B (Nov 2007 revision)

TIMESCALE (Duration in months)

Part 1	Mths	Commences
Phase Start Date		Aug 2005
Purchase	1	Aug 2005
Pre-Construction	8	Sep 2005
Construction	12	May 2006
Letting	9	May 2007
Income Flow	12	Feb 2008
Part Length	42	
Project Length	43	

ASSUMPTIONS

CONSTRUCTION

1. Construction Costs paid on S-Curve
2. Professional Fees are related to Construction

DISPOSAL

1. Purchaser's Costs based on Gross Capitalisation
2. Purchaser's Costs Deducted from Sale (not Added to Costs)
3. Sales Fees based on Sales plus Net Capitalisation
4. Sales Fees Added to Cost (not Deducted from Sale)

INTEREST

1. Single rates of Interest adopted for all Payments/Receipts: Debit Rate 7.00% Credit Rate 4.00%
2. Interest Compounded Quarterly and Charged Monthly
3. Same rate of interest in each DCF period
4. Interest Not calculated on items in final DCF period
5. Interest Not included in IRR calculations
6. Effective Rates of Interest used

INFLATION/GROWTH

Inflation Sets
Set Number Set 1
Infl. Rate % 0.00

CASHFLOW

1. Payments In Arrears
2. Receipts In Advance
3. Initial IRR guess rate 8.00%

VALUATION

Tables are Annually in Arrears
Tenant's rent valued as true income stream

RESIDUAL TARGETS

Part 1 Profit on GDV 15%

**LAMBERT SMITH HAMPTON
BLUE ACRES DEVELOPMENT
APPRAISAL B (Nov 2007 revision)**

Appraisal Summary for Part 1

REVENUE

Rental Area Summary	ft²	Rate ft²	Grs Rent pa
retail ground	12,018	£36.00	304,700
first offices	19,298	£15.00	289,470
second offices	16,650	£15.00	249,750
third offices	13,184	£15.00	197,760
fourth + mezz offices	11,516	£15.00	172,740
parking spaces	69 units at	£1,000	69,000
	<u>72,666</u>		<u>1,283,420</u>

Investment Valuation			Yield	Factor	Cap.Rent
retail ground					
Valuation Rent	304,700	YP @	6.5000%	15.3846	4,687,692
first offices					
Valuation Rent	289,470	YP @	6.5000%	15.3846	4,453,385
second offices					
Valuation Rent	249,750	YP @	6.5000%	15.3846	3,842,308
third offices					
Valuation Rent	197,760	YP @	6.5000%	15.3846	3,042,462
fourth + mezz offices					
Market Rent	172,740	YP @	6.5000%	15.3846	
(6 Mths Rent Free)		PV 9m @	6.5000%	0.9690	2,575,163
parking spaces					
Valuation Rent	69,000	YP @	7.5000%	13.3333	920,000
					19,521,009

NET CAPITALISATION

Purchaser's Costs	5.75%	-1,122,458			19,521,009
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NET DEVELOPMENT VALUE

18,398,551

Income from Tenants

parking spaces	69,000	
retail ground	152,350	
first offices	217,103	
second offices	62,438	
Third offices	49,440	
		550,330

ADDITIONAL REVENUE

car pk income to construction	22,000	
		22,000

NET REALISATION

18,970,881

OUTLAY

ACQUISITION COSTS

Acquisition price		1,824,586
Stamp Duty	4.00%	72,983
Acquisition Agent Fees	1.00%	18,246
Acquisition Legal Fees	0.50%	9,123
Town Planning		17,000
Building regs		40,000
		1,981,938

**LAMBERT SMITH HAMPTON
BLUE ACRES DEVELOPMENT
APPRAISAL B (Nov 2007 revision)**

CONSTRUCTION COSTS

Summary	ft²	Rate ft²	Costs	
Construction cost per dbk back			10,637,176	
S106/238 costs per DWP			30,000	
				10,667,176

Other Construction

PROFESSIONAL FEES

prof fees over 6% DBK incl	6.50%	691,416		691,416
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MARKETING

Marketing		50,000		
Letting Agent Fees	10.00%	128,342		
Letting Legal Fees		64,171		
				242,513

DISPOSAL FEES

Sales Agent Fees	1.00%	183,986		
Sales Legal Fees	0.50%	91,993		
				275,978

FINANCE

Timescale	Duration	Commences
Purchase	1	Aug 2005
Pre-Construction	8	Sep 2005
Construction	12	May 2006
Letting	9	May 2007
Income Flow	12	Feb 2008
Total Duration	42	

Debit Rate 7.000% Credit Rate 4.000% (Effective)

Land	236,091	
Building	354,237	
Letting Void	745,381	
Other	847,999	
Total Finance Cost		2,183,708

TOTAL COSTS

16,042,730

PROFIT

2,928,151

Performance Measures

Profit on Costs%	18.25%
Profit on GDV%	15.00%
Profit on NDV%	15.92%
Development Yield	8.00%
Equivalent Yield (Normal)	6.52%
Equivalent Yield (True)	6.79%
IRR %	15.17%
Rent cover	2 yrs 3 mths
Profit Erosion (finance rate (7.000%))	2 yrs 5 mths

LANDS TRIBUNAL VALUATION APPRAISAL SUMMARY
BLUE ACRES DEVELOPMENT
APPRAISAL A Sale of whole and letting floors 2,3,4 delayed 12 months

Appraisal Summary for Part 1

REVENUE

Rental Area Summary	ft²	Rate ft²	Gross MRV
retail ground	18,103	£15.00	271,545
first offices	19,298	£15.00	289,470
second offices	16,650	£15.00	249,750
third offices	13,184	£15.00	197,760
fourth + mezz offices	11,516	£15.00	172,740
Totals	78,751		1,181,265

Investment Valuation

retail ground

Current Rent	271,545	YP @	6.5000%	15.3846	4,177,615
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first offices

Current Rent	289,470	YP @	6.5000%	15.3846	4,453,385
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second offices

Current Rent	249,750	YP @	6.5000%	15.3846	3,842,308
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third offices

Current Rent	197,760	YP @	6.5000%	15.3846	3,042,462
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fourth + mezz offices

Market Rent	172,740	YP @	6.5000%	15.3846	
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(9 Mths Rent Free)		PV 9m @	6.5000%	0.9539	2,534,938
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18,050,707

GROSS DEVELOPMENT VALUE

Purchaser's Costs	5.75%	(1,037,916)	18,050,707
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NET DEVELOPMENT VALUE

17,012,792

Income from Tenants

retail ground	339,431
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first offices	506,573
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second offices	62,438
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third offices	49,440
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957,881

Additional Revenue

car pk income to construction	22,000
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22,000

NET REALISATION

17,992,673

OUTLAY

ACQUISITION COSTS

Residualised price	1,149,527
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Stamp Duty	4.00%	45,981
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Agent Fees	1.00%	11,495
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Legal Fees	0.50%	5,748
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Town Planning	17,000
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Building regs	40,000
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1,269,751

LANDS TRIBUNAL VALUATION APPRAISAL SUMMARY
BLUE ACRES DEVELOPMENT
APPRAISAL A Sale of whole and letting floors 2,3,4 delayed 12 months

CONSTRUCTION COSTS

Construction cost per dbk back		10,248,866	
S106/238 costs per DWP		30,000	
			10,278,866

PROFESSIONAL FEES

prof fees over 6% DBK incl	6.50%	666,176	
			666,176

MARKETING

Marketing		50,000	
Letting Agent Fees	10.00%	118,127	
Letting Legal Fees	5.0%	59,063	
			227,190

DISPOSAL FEES

Sales Agent Fees	1.00%	170,128	
Sales Legal Fees	0.50%	85,064	
			255,192

FINANCE

Debit Rate 7.00% Credit Rate 4.00% (Nominal)			
Land		148,743	
Construction		341,539	
Letting Void		679,615	
Other		1,778,731	
Total Finance Costs			2,948,628

TOTAL COSTS

15,645.802

PROFIT

2,346,871

Performance Measures

Profit on Costs%	15.00%
Profit on GDV%	13.00%
Profit on NDV%	13.79%
Development Yield% (on MRV)	7.55%
Equivalent Yield (Nominal)	6.50%
Equivalent Yield (True)	6.77%
Gross Initial Yield%	6.54%
Net Initial Yield%	6.54%

	11.88%
Rent cover	2 yrs 0 mths
Profit Erosion (finance rate (7.000%))	2 yrs 0 mths