**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2021] UKUT 0269 (LC)**
**UTLC Case Number: LC-2020-141**
**(formerly ACQ/92/2020)**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***COMPULSORY PURCHASE – COMPENSATION – office building acquired as part of comprehensive redevelopment of Salford City Centre – rule 2 value in no scheme world – s.5, Land Compensation Act 1961 – Compensation determined at £5,597,500***

**IN THE MATTER OF A NOTICE OF REFERENCE**

**BETWEEN:**

**TIMEC 1209 LLP**

**Claimant**

**and**

**SALFORD CITY COUNCIL**

**Respondent**

**Re: City Wharf**
**30 New Bailey Street**
**Salford**
**M3 5ER**

**Martin Rodger QC, Deputy Chamber President and P D McCrea FRICS**

**Manchester Civil Justice Centre**

**19 – 23 July 2021**

*Vincent Fraser QC,* instructed by Travers Smith LLP, for the claimant
*Richard Glover QC,* instructed by Eversheds-Sutherland LLP, for the respondent

## Introduction

1. The municipal boundary dividing the City of Salford from the City of Manchester runs down the centre of the River Irwell. On the north bank (the Salford side) between the river and Salford Central Station, lies a plot of land which was acquired from the claimant, Timec 1209 LLP, by the respondent, Salford City Council, on 2 February 2015 pursuant to the Salford City Council (Salford Central) Compulsory Purchase Order 2010. The issue in this reference is the amount of compensation payable to the claimant for the compulsory acquisition of that plot.

2. The claim was referred to the Tribunal on 2 June 2020 and valued the land at the date of acquisition at £11,180,000. The respondent values it at £3,000,000.

3. We received evidence from 13 witnesses. Evidence about the negotiations between the respondent's development partner, English Cities Fund ("ECF"), and the claimant was given by Mr Stephen Surphlis and Ms Brigid O'Donnell of MRP Investment and Development, formerly the investment and development arm of the claimant's parent company, McAleer & Rushe ("M&R"), and by Mr Philip Mayall of ECF. Expert evidence on planning was given by Mr Alistair Skelton for the claimant and Mr John Francis for the respondent; on the office letting market by Mr Peter Skelton and Mr James Evans; on the hotel market by Mr Tom Holt-Wilson and Mr Tim Stoyle; on the cost of development by Mr David Wilson and Mr Bill Bordill; finally, evidence on the amount of compensation to which the claimant was entitled was given by Mr Mike King for the claimant and by Mr Ged Massie for the respondent.

4. At the hearing of the reference the claimant was represented by Vincent Fraser QC and the respondent by Richard Glover QC, both of whom made written submissions after the conclusion of the hearing. We are grateful to them and to all the witnesses for their assistance.

## The heads of claim and the legal framework

5. The claimant's claim for compensation has three components, the most significant of which is brought under rule 2 of section 5 of the Land Compensation Act 1961 in respect of the value of the freehold interest in the reference land on the vesting date of 2 February 2015. The other two components are agreed. A claim for pre-reference costs was compromised after the hearing at £22,500. The claimant is also entitled to the maximum £75,000 basic loss payment under section 33A, Land Compensation Act 1973.

6. There was no dispute over the statutory basis on which compensation should be assessed. The CPO was made on 24 December 2010 and the valuation of the claimant's interest is required to be conducted in light of the compensation provisions in section 6 of the 1961 Act as they existed before the amendments introduced by the Localism Act 2011 and the Neighbourhood Planning Act 2017.

7. In summary the value of the claimant's land for the purpose of compensation is taken to be the amount which the land would be expected to realise on 2 February 2015 if sold in the open market by a willing seller. No account is to be taken of any diminution in the value of the claimant's interest which is attributable to the scheme underlying the acquisition. It is necessary therefore to identify development which was in prospect or had

already been undertaken by the valuation date as part of that scheme and to consider whether it would have been likely to have been carried out if the respondent had not acquired any of the scheme land. If not, any change in the value of the claimant's interest which is attributable to that development must be disregarded.

8. The scheme, the effects of which are to be disregarded in the assessment of compensation, is agreed to comprise the whole of the regeneration of Salford Central envisaged by the 2010 Order.

**The facts in outline**

9. In the eighteenth century the reference land was part of the site of Salford's New Bailey prison, which gave its name to New Bailey Street. By the date of acquisition, a seven-storey 1970s office building stood on the land. The building was known at different times either as Washington House or as City Wharf. It had a postal address 30 New Bailey Street and an additional frontage to Stanley Street, which runs perpendicular to New Bailey Street and parallel to the river.

10. The claimant is a limited liability partnership, wholly owned by M&R, a substantial property development company based in Northern Ireland but active throughout the UK. It acquired City Wharf and the reference land in March 2007 for £15m. On 2 May 2012 it was granted planning permission for the demolition of the existing building and its replacement by a substantial development of offices and a hotel.

11. The respondent is the local authority for the City of Salford. In 2006 it entered into a development agreement with ECF - a partnership between Muse Developments Limited, Legal & General, and Homes England - which was established with government support in 2000 to regenerate inner city areas. The objective of the development agreement was to deliver a comprehensive programme of regeneration of "Salford Central", an area comprising the historic core of the City of Salford and extending to about 23 hectares (57 acres) on both sides of Chapel Street, the main street in the city centre, including all of the land between Salford Central Station and the River Irwell.

12. In the furtherance of the objectives of the development agreement the respondent adopted new planning policies and guidance. In July 2010 an area-wide planning permission was granted for a comprehensive redevelopment including up to 197,000 sqm of offices, studios and workshops, more than 24,000 sqm of commercial floor space, two hotels, 849 dwellings, 2,167 parking spaces and substantial public realm improvements.

13. The area to the south of the railway station which includes the reference land was identified as "Zone B" in the Salford Central master plan which supported the area planning permission. Zone B is bounded by the River Irwell to the south, New Bailey Street to the east, an elevated section of the Manchester to Bolton railway line to the north, and Irwell Street to the west. Stanley Street, which bisected Zone B, had once linked New Bailey Street to Irwell Street but had later become a no-through road for vehicles. The zone extended to 3.06 hectares (7.5 acres) and at the date of acquisition of the reference land it was largely given over to extensive surface car parking with only a few office buildings straddling Stanley Street. The low density built environment of Zone B increasingly contrasted with the successful Spinningfields district of Manchester city centre on the

opposite bank of the River Irwell which began to emerge as a new high-quality office and leisure destination in the years after the millennium.

14. The development of Zone B (later branded the New Bailey Quarter) as an office and commercial quarter comparable in quality and prestige to Spinningfields was seen by the respondent and its development partners as absolutely critical to the success of the wider regeneration project. Their intention was that the profitable development of Zone B and other riverside zones would provide a direct subsidy for regeneration of much less promising areas further into the city centre.

15. Despite bringing forward the Salford Central CPO and securing its confirmation in March 2012, the respondent had no objection in principle to redevelopment being delivered by existing landowners without its involvement, provided their proposals were consistent with its wider regeneration objectives and could be integrated with its own timetable. The claimant's plans for an office and hotel development on the reference land were consistent with the respondent's vision, but their implementation in the shadow of the CPO and in the wake of the worldwide financial crash of 2008 was not straightforward. Discussions between the respondent's development partner, ECF, and the claimant over an implementation agreement to secure the development of the reference land by the claimant had begun in 2008 and were not finally broken off until August 2014. During that period the claimant obtained its own 2012 planning consent and negotiated with a potential occupier of the proposed offices (BUPA) and with a possible tenant for the hotel, but failed to persuade its lenders, Ulster Bank, to back the scheme. After five years of negotiations ECF and the respondent became frustrated by the claimant's inability to conclude an agreement and terminated the discussions. For their part, the claimant and M&R felt they were close to finalising an acceptable agreement committing themselves to proceeding with their own 2012 planning consent, and they were resentful that ECF had been unwilling to allow them further time before the respondent resorted to a general vesting declaration. That sense of betrayal and resentment was very clear from the evidence given by Mr Stephen Surphlis, Managing Director of the investment and development arm of M&R.

16. The evidence of Mr Mayall and Mr Surphlis was devoted to a close examination of the negotiations between the claimant and ECF which it is unnecessary for us to recount. Some particular features of the proposed implementation agreement are however worth mentioning because they were relied on by both sides as giving some insight into the value of the reference land.

17. The basic structure of the proposal was for the claimant to commit itself to commencing development of the reference land once the project reached a predetermined viability threshold. If viability had not been achieved by a longstop date, initially proposed to be three years but later extended at the claimant's request to seven years, ECF was to have the option to terminate the agreement and acquire the site at its then market value. At the claimant's request it was agreed that it would not be required to commence development until the residual value of the site exceeded £7.5m. Mr Surphlis confirmed that the figure of £7.5m was not intended to reflect a current value of the land at the time of the negotiations.

18. While it was negotiating with ECF the claimant was also trying to interest the market in the reference land with a view to securing pre-lets for the offices and hotel. Marketing material prepared in 2012 emphasised the relationship of the site to the emerging New

Bailey regeneration area. The only specific interest was from BUPA which was looking to secure 160,000 sq ft of new office space by the end of 2014 and was considering the New Bailey Quarter. In 2012 the claimant and ECF were invited to submit joint proposals to design and build a new building for letting to BUPA. At the insistence of the claimant's bank the joint proposal was based on an assumed land value of £5m and required that M&R, the claimant's parent company, be appointed main contractor. The joint proposal failed to reach a shortlist of six sites, and a later proposal to sell the site to BUPA for £10m was also rejected. We were shown a letter from BUPA's agents explaining why the original bid had been unsuccessful. BUPA was attracted to the reference land but only as part of a wider New Bailey masterplan giving certainty that other phases would be delivered, and it was particularly nervous that any possible delivery of the City Wharf site in isolation from the wider New Bailey scheme would have left it without guarantees that the additional commercial buildings and public realm would materialise. In that event it felt it would be left "isolated across the river", a situation which it wished to avoid.

19. BUPA were not alone in lacking confidence that the development of Zone B would be achieved in a coordinated way. When ECF began marketing the New Bailey Quarter as a whole in 2014 uncertainty over the future of City Wharf was reported to be a concern of many Manchester office agents.

20. Since the vesting of the reference land in the respondent on 2 February 2015 Zone B has been transformed into the New Bailey Quarter by the construction of a series of tall office and residential buildings. The first of these to be developed, One New Bailey, is immediately adjacent to the reference land on the site of what had been Ralli Courts. It is a grade A office building of 125,000 sq ft.

21. Two facts about the funding and letting of One New Bailey were drawn to our attention. First, Mr Mayall of ECF explained that the development would have been undeliverable without a substantial commitment by the respondent itself, which took a headlease of the whole building for a term of 25 years at an annual rent of about £2.3m. This commitment enabled the project to be funded. Secondly, Mr Evans provided evidence about the first letting of space at One New Bailey in 2015. Five floors were let to a substantial professional firm on highly favourable terms, including a 36 month rent free period on a ten year lease, with a capped rent review and a right for the tenant to surrender 40% of the space at any time during the first five years.

22. City Wharf was demolished within a few months of vesting, but construction on the reference land has started only relatively recently. The central service core of a new office building destined for occupation by BT is now visible on the site.

**The reference land and Salford Central at the valuation date**

23. For the purpose of the rule 2 valuation, changes in the value of the reference land attributable to the Salford Central scheme must be disregarded. The parties agreed that in the no-scheme world the condition of the reference land and its immediate locality would not have changed between December 2010 when the CPO was made and the valuation date of 2 February 2015. The condition of the land at the date of the CPO is therefore significant.

24. Fortunately, the condition of the area at about that time is well described in two documents: Salford City Council's Planning Guidance adopted in March 2008 and largely drafted by Mr Francis, the respondent's expert planning witness; and the report of the planning inspector published on 9 January 2012 which led to the confirmation of the CPO. These documents underpinned a joint statement by the planning experts describing the notional no-scheme environment in which the New Bailey Quarter and the wider Salford Central regeneration were not being promoted or in prospect and where none of the changes which can been seen today had occurred. It is that landscape which we now describe and on which we will base our own valuation.

25. The area around Chapel Street and Salford Central Station represents the historic core of the city of Salford. It remained an important civic administrative and commercial centre until the 1970s, but it then began to decline. By the 1990s the population of the city was falling, and the number of empty, neglected and underused buildings was rising. High levels of unemployment, long-term illness and crime blighted the area.

26. In both the City Council's Planning Guidance and the report of the CPO inspector the area between the railway station and the river was described as having "minimal townscape quality" and as dominated by large surface carparks, particularly when viewed from Irwell Street (the western boundary of what became Zone B). The surface car parks were operated by NCP, which we were told had a long leasehold interest for a term of 35 years from 2002 with an option to renew for a further 20 years. The main exceptions to what was otherwise an expanse of open land fringed by advertising hoardings were four prominent buildings standing close to the river, between New Bailey Street and Irwell Street, one of which was City Wharf on the reference land.

27. The largest of the four buildings on Zone B, the Ralli Quays office building on Stanley Street, stood on the bank of the river just outside the CPO boundary. It was a 1980s building of between six and eight storeys occupied by an investigative branch of HMRC and of a scale which the inspector said stood comfortably against the backdrop of Spinningfields on the opposite bank. Ralli Quays was surrounded by an unattractive fenced and gated security enclosure blocking the passage of vehicles along Stanley Street.

28. On the north side of Stanley Street, opposite Ralli Quays and adjoining City Wharf, was Ralli Courts, a three-storey courtyard office development in its own gated and fenced compound. The inspector was unimpressed by the design of Ralli Courts, describing it as inward-looking and out of scale with Ralli Quays, City Wharf, and Spinningfields. Despite that negative assessment, many of the small professional firms who had their offices around the courtyard were keen to remain and resisted the making of the CPO. The inspector nevertheless accepted the respondent's case that the redevelopment of Ralli Courts was essential to the creation of a new high-quality office and commercial quarter.

29. Immediately to the west of Ralli Quays, on the corner of Stanley Street and Irwell Street, stood a three-storey Victorian office building, "vacant and seemingly uncared for" according to the inspector, but with attractive street facades. There was some debate before us about whether the inspector's description implied that the building was derelict, but we think that exaggerates its condition. It seems likely, however, that it had no future as a modern office building without significant expenditure being incurred.

30. To the east of the reference land, on the opposite side of New Bailey Street and outside Zone B, was a substantial 1970s office complex known as Riverside. Further along that side of New Bailey Street towards the station was a more recent residential block of up to 13-storeys with retail uses at ground level. Behind these buildings, and perched above the River on the Salford side, was the 5-star Lowry Hotel which had opened in 2001.

31. City Wharf itself was a 7-storey office building of frame construction, with a net internal area of just over 40,000 sq ft (3,700 sqm), and with brick clad elevations and a flat roof. The internal specification included painted plaster walls, perimeter trunking, carpeted floors, suspended ceilings incorporating category 2 lighting, single glazed wooden framed windows, an unspecified air conditioning/air handling system and a combination of open plan and partitioned office space. The building was served by two passenger lifts and had underground parking for 43 vehicles.

32. By 2012 the 1970s building was found by the inspector to be generally unattractive and dated. It had been described in more favourable terms by Knight Frank, who valued it in 2007 for the claimant's purchase. Knight Frank emphasised the building's highly visible riverside position (an assessment with which we agree) and the considerable quantity of recent new development which was said to have increased the profile of the area as an office location. We take that to be a reference to Spinningfields, and to the new Law Courts, both on the opposite bank of the Irwell.

33. By the valuation date Spinningfields itself had become a distinct modern office and leisure quarter comprising ten high quality buildings (with two more in development or planned) in a carefully designed, high quality public realm. It had attracted banking and professional firms by offering the highest quality Grade A office space commanding the highest rents in Manchester city centre at £30 psf, double the prevailing rates for the offices available on the Salford side of the river.

34. Nevertheless, by the valuation date we do not think the identification of the reference land as being on the fringe of Manchester's successful new office quarter was as fanciful as some of the respondent's evidence suggested. For all that we were told the river represents a clear and well-known demarcation between the two cities, visually (if not administratively) the distinction is, and was, much less pronounced. The Irwell is steeply banked and at ground level it is obvious only to someone standing immediately beside it. From the heart of Manchester city centre any tall building on the reference land would be clearly visible to someone standing at the junction of Deansgate and Bridge Street (which adjoins Spinningfields and becomes New Bailey Street when it crosses the river).

35. We therefore agree with the inspector's observation that the buildings on what would become Zone B, including City Wharf, "seemingly relate more to Manchester than Salford". That impression can only have been enhanced by the highly visible Lowry Hotel, by the separation of Zone B from the rest of Salford city centre by the elevated railway line, and by the construction of a footbridge across the river linking Stanley Street on the Salford side with Spinningfields on the opposite bank and providing a direct route, past the reference land, to Salford Central Station. Planning permission for this structure had been granted in 2002 and it pre-dates the CPO by several years. The parties could not agree whether the footbridge was part of the Salford Central scheme or part of the Spinningfields development, but the valuation witnesses considered that its presence made no difference

to the value of the reference land. For that reason, we were not invited to resolve the status of the footbridge in the no scheme world and we make no determination on that issue.

**The claimant's planning permission**

36. On 2 May 2012 the claimant was granted planning permission for the demolition of City Wharf and the erection of a mixed-use development of up to 14 storeys including grade A office space, a 271 bed hotel, retail and ancillary uses at ground floor level, landscaping and basement carparking. We shall refer to this as the Timec permission and to the development as a whole as the consented scheme.

37. The consented scheme was arranged as two back to back U-shaped blocks separated by a party-wall and a central lightwell. The northern block was to accommodate the hotel, with the southern block housing the offices. The proposed building façade was a combination of glazing and masonry. The building line was stepped back slightly at ground and first floor level and again from the tenth floor and above. An external roof terrace was to be provided at tenth floor level.

38. The office element of the consented scheme comprised just over 112,000 sq ft (10,422m$^2$) and was arranged over basement, ground and 12 upper floors with a plant area at 13$^{th}$ floor level. Four ground floor retail units were also proposed. The building reception was located on the ground floor with access to four passenger lifts. The floor plates from second to ninth floor were just over 10,000 sq ft.

39. Access to the basement carpark was to be from a service road on the north side of the building and by means of a single car lift. There was insufficient space within the site to accommodate a ramp, but the claimants hoped to be able to negotiate an arrangement with the adjoining owner to facilitate more convenient access to the carpark. We were informed by Mr Evans that he was aware of only two other grade A office buildings in Manchester served by a car lift, and both of those buildings were refurbished historic properties rather than new developments.

**Planning policy at the valuation date and the making of the CPO**

40. Relevant planning policies at the valuation date included saved policy MX1 of the Salford Unitary Development Plan which had originally been adopted in June 2006, Planning Guidance for Salford Central adopted by the respondent in March 2008, and the respondent's Salford Central Development Framework of May 2009. These policies were consistent in encouraging a variety of development with the aspiration of promoting Salford Central as a key quarter of the wider Manchester city centre and taking advantage of commercial opportunities around Salford Central Station, linking to Spinningfields.

41. The parties agree that relevant planning policy was consistent with the claimant's proposals for the reference land. We can therefore limit citations to some specific aspects of policy relevant to the viability of the reference land for development in isolation from the larger Salford Central scheme, which was the primary focus of the policy documents we were shown.

42. The 2008 Planning Guidance emphasised the significant regeneration opportunity created by the proximity of Salford Central to Spinningfields and the potential to extend the city

centre commercial area across the river. It noted that only limited regeneration had been achieved through localised improvements in housing and acknowledged that new investment had so far been focussed only on certain parts of Salford Central. Those parts included the Station area which, the Guidance predicted, would "continue to benefit from the expansion of Manchester City Centre". The challenge which the Guidance identified was the need for a coordinated and comprehensive transformation of the whole area, so that the most disadvantaged parts of the city centre could benefit from development, and not simply those areas in which developers had already begun to show an interest. The essence of the respondent's strategy was to tie the regeneration of the least attractive parts of Salford Central to the development of the commercial zones along the river which would create a critical mass and a cross-subsidy sufficient to unlock the opportunity of development across the whole 50 acre area covered by the Guidance.

43. The implementation strategy identified in the Guidance recognised that it would be necessary to assemble sites of an appropriate size in order to create the critical mass of development needed to achieve the respondent's aspirations. It was hoped that the necessary site assembly would take place by agreement rather than by compulsion. To that end the respondent had selected ECF as its lead developer for the bulk of the Salford Central area, but encouragement was given to landowners who wished to develop their land in a manner consistent with the master plan. Developers who could demonstrate compliance with the principles set out in the Guidance were told that they would have the in-principle support of the respondent.

44. Despite the willingness of the respondent to work with existing landowners to give effect to the masterplan for Salford Central, the Inspector recommended that the CPO be confirmed without amendment. He was in no doubt that comprehensive regeneration of the whole of the Salford Central area could be achieved only through the CPO process. To his mind the challenge was not whether regeneration was required but how it was to be achieved comprehensively. That aim would be greatly assisted by the diversion of part of the profits of office development on Zone B to cross-subsidise development in the less viable areas to the north and west of the railway line. Zone B had the greatest potential for redevelopment because of its relationship to Spinningfields.

45. The respondent's objective was comprehensive redevelopment but nothing in the Inspector's report suggested that further development of Zone B, or of the reference land alone, was dependent on the CPO and he acknowledged that some landowners were sympathetic to redevelopment. The claimant and the owners of Riverside House objected to the order so far as it related to their land on the grounds that they already intended to develop their sites consistently with the master plan. In the case of City Wharf the claimant already had planning permission. But there were strong objections from occupiers of Ralli Courts and initially at least from NCP, although its objection was eventually withdrawn.

46. The Inspector accepted the respondent's case that, to deliver an essentially office-led scheme in an unproven office location such as Salford Central depended for its overall success on achieving a sufficient scale of development. To allow Ralli Courts to remain at the heart of a new commercial quarter dominated by larger-scale buildings would adversely affect the rents which could be achieved for those buildings and fatally undermine "the fundamental concept of a high-profile office-led scheme mirroring Spinningfields across the river." That in turn would prejudice the critical ability of Zone B to cross-subsidise the less viable elements of the Salford Central scheme as a whole.

47. The planning material and the Inspector's report support the claimant's general case that the development of the reference land was consistent with planning policy. Geographically, it was capable of forming part of a natural extension of Spinningfields. But the fact that the claimant's proposals were achievable in planning terms does not mean that they were commercially viable. There is no evidence before us that any other part of Zone B had the benefit of planning permission for redevelopment, nor that any other landowner had active development plans. NCP may have withdrawn its objection to the CPO but it occupied the greater part of Zone B for a profitable use and enjoyed long term security of tenure. The overwhelming likelihood is that, in the no scheme world, any implementation of the claimant's plans for the redevelopment of the reference land would have taken place in isolation and that the surrounding area would have remained as we have described it above for the foreseeable future. By the end of the evidence this assessment was not seriously in dispute.

**The main issue**

48. The main issue in the reference is whether a profitable development of the reference land by implementing the Timec permission would have been possible in the no-scheme world.

49. The claimant's case is that the development of its land independently of the regeneration of neighbouring sites would have been viable in 2015 and that the benefit of the Timec permission gave its land a value of around £10m at the date of acquisition.

50. The respondent's case is that, absent the comprehensive regeneration made possible by the CPO (the effects of which must be disregarded), the reference land would have remained an isolated site in an area otherwise free of high quality office buildings and could not have generated a positive value through the implementation of the Timec permission. The respondent therefore suggests that the claimant will be fairly compensated by receiving the value of the existing office building on the site on the assumption that it could have been refurbished and re-let. On that basis the respondent values the reference land at £3m.

51. We approach the question of whether a profitable development would have been possible in two parts, as we are satisfied parties negotiating a sale of the reference land on the valuation date would have done. Because of its location in what at that time was a fringe office location the first thing in the mind of a potential purchaser of the land would have been the capital value of City Wharf itself. It must be assumed that the building was vacant (as it was in reality on the valuation date) and a purchaser would have taken account of the opportunity to refurbish and relet. An assessment of the value of the refurbished building, and of the cost of its refurbishment, would therefore have underpinned the value of the reference land on the valuation date. We will consider it first and refer to it as the City Wharf value.

52. The parties would then have compared, perhaps at first with a very broad brush, the value of a refurbished and re-let City Wharf with the value of the site if the building were demolished and the Timec permission, or something like it, built out. We will assess that alternative value on the same broad-brush basis as a prospective developer would have done on the valuation date and we refer to it as the Timec value.

53. The much larger project necessary to achieve the Timec value would obviously have come at a higher cost and would have involved additional risks compared to the refurbishment

which would produce the City Wharf value. In our judgment those costs and risks would not have been acceptable unless there was clear water between the Timec value and the City Wharf value. Put simply, if there was not a significant margin between the two values the Timec value would have been irrelevant to the open market value of the land on the valuation date. No potential purchaser would take the additional risk for a marginal reward, and instead would base any bid for the reference land first and foremost on their assessment of the City Wharf value. Any expectation that something more comprehensive might be possible in the future might justify an allowance for hope value.

*City Wharf value*

54. Mr King valued City Wharf by reference to comparable evidence, Mr Massie by adopting a dual approach using a short form residual valuation, sense checked by reference to comparable evidence.

55. Disappointingly, the experts were unable to agree the net internal area of the building. Neither of them had carried out a measured survey. Mr King's 43,077 sq ft relied upon a secured lending report for Ulster Bank carried out by Knight Frank, in which the floor area is said to have come from a measured survey. The Knight Frank report had some typos and inconsistencies; elsewhere in the report a floor area of 43,127 sq ft is calculated, which appears mathematically correct having regard to the individual floor areas recorded. Mr Massie's 39,397 sq ft relied upon a colleague's measurements. Neither expert was able to suggest any basis on which the Tribunal should prefer one measurement over the other. Given that the rival figures were so close and neither of them had measured the building, if the experts had been objective, they would have agreed a compromise instead of simply digging in. We have done what they should have done and have taken a mid-point of 41,262 sq ft.

56. Mr King valued City Wharf at £6.115 million, based upon a capital rate of £142 per sq ft including parking, or £113 net of parking, added at £2,000 per annum per space, capitalised at 6.5%. He referred to a schedule of 22 comparable transactions across Manchester, which he said ranged from £116 to £286 per sq ft, but with a core tone of £135 to £185 per sq ft. He accepted in cross examination that he had not analysed the transactions but had reflected on their broad range and identified two as being of particular interest. Had he undertaken an analysis he would surely have agreed with Mr Massie's criticism of their unsuitability as comparable evidence. Rather than straight office sales with vacant possession, the majority were either investment properties, often mixed retail/office in nature, where the value achieved would have had regard to tenant covenant strength, lease terms, etc; or they contained portfolio sales of a number of properties. In the case of 67-73 and 73-75 Mosley Street, the CoStar report on which Mr King relied wrongly ascribed the aggregate purchase price of both properties to each one of them, thus artificially inflating the sale price per sq ft.

57. It was therefore unsurprising that Mr King did not explain how his rate of £142 per sq ft was influenced by the 22 transactions he included in an appendix to his report. No amount of analysis could have made sense of most of them as comparators for City Wharf, and it is surprising that they were included at all. To refer to one or two transactions which are obviously not comparable may be regarded as a misfortune, to refer to 22 suggests a misunderstanding of the proper boundaries of expert evidence. Mr King may have wished

to demonstrate the depths of his local knowledge, but the Tribunal did not need to be told about every office building sold in Manchester city centre around the valuation date. Just as importantly, the parties did not need to incur the expense of lawyers and surveyors on both sides considering them, only to conclude, as does the Tribunal, that they are not comparable.

58. Mr King focussed on only two of the transactions as being of specific interest. These were the sales of St James's Court on Brown Street, and of London Scottish House on Mount Street. But he accepted in his report and confirmed in cross examination that it is very difficult to draw any relevant conclusion from either of these, both of which were the subject of substantial redevelopment and extension following purchase. We agree, and do not derive any assistance from them. In general, Mr King's focus on the value of the Timec permission led him to pay insufficient attention to the value of City Wharf as it stood on the valuation date.

59. For the Authority, Mr Massie adopted a basic residual approach to arrive at the value of the building as it stood, assessing the rent that could be achieved in a refurbished state and deducting from the resulting capital value the costs of refurbishment. In carrying out that exercise, Mr Massie relied upon the evidence of Mr Evans in respect of rental levels, incentives, yields etc, and upon the evidence of Mr Bordill as regards refurbishment costs.

60. Mr Evans' evidence was that the likely purchaser of City Wharf in the no-scheme world would be a speculator for whom redevelopment for office use would have been only one potential route. That purchaser would have an eye to potential longer-term regeneration in Salford and the surrounding area in the hope that the reputation of the area and perceptions would eventually change. At that point, whenever it might be, redevelopment of the property for an alternative use would be considered. In the short to medium term the speculative purchaser would have wanted an income stream from the property and would have concluded that by undertaking a "light touch" refurbishment of the existing building they could secure lettings to occupiers requiring cheaper, refurbished offices. Mr Evans explained "light touch" as including new reception finishes, an overhaul of lifts and M&E systems, the refurbishment of wc's, new Cat A refurbishment of lettable office space where required, and ensuring windows were fit for purpose.

61. As for the rents which the refurbished property could achieve, Mr Evans provided a range of comparable transactions, the most proximate of which was the Riverside complex, directly opposite City Wharf, where £15-£16 per sq ft had been achieved for what Mr Evans described as good quality refurbished space. He considered this to be the most comparable property in terms of both location and the specification which could be achieved with a "light touch" refurbishment, and we agree. Mr Evans therefore considered £15 per sq ft was a reasonable rent to apply to City Wharf. On yields, evidence of sales of refurbished office buildings was scarce, but Mr Evans pointed to three transactions in a range of 6.5 to 7.02% in and around Manchester's central business district. Given the likely short-term nature of the leases at a refurbished City Wharf and the relative weakness of the location as a commercial destination, he considered that a yield of 7.5% was appropriate.

62. Mr Bordill and Mr Wilson agreed the build cost of the Timec permission, and as only Mr Bordill had expressed a view on the likely refurbishment cost of City Wharf, only he was

cross-examined on his report. Mr Bordill's instructions departed slightly from the assumptions made by Mr Evans in his evidence in that Mr Bordill costed "new Cat A refurbishment of the lettable office space", i.e. all of it as opposed to Mr Evans' assumption that refurbishment would take place only 'where required'. Mr Bordill's £2 million works cost before preliminaries, contractor's overhead and profit, allowed a provisional sum of £500,000 to overhaul the mechanical and electrical installation. We found Mr Bordill to be a credible witness and we accept that his evidence provided a fair assessment of the likely cost of the refurbishment he envisaged on the material available to him. The real question is whether the refurbishment Mr Bordill was instructed to cost reflected the work that a notional purchaser would expect to carry out; we will return to that issue below.

63. Armed with the evidence of Mr Evans and Mr Bordill, Mr Massie adopted rents of £15 per sq ft and £1,800 per car parking space to arrive at a headline rent of just over £700,000 per annum for a refurbished City Wharf. Allowing for a 25% rental void, a one-year refurbishment programme, and a net initial yield of 7.5%, he calculated a capital value, once refurbished, of £5.89 million. From this he deducted Mr Bordill's total cost of refurbishment of £2.37 million, contingencies, holding and finance costs including empty business rates, to arrive at a residual value for City Wharf of £2.86 million but say £3 million.

64. We do not consider Mr Massie's residual valuation to be credible. No purchaser would undertake the refurbishment of the building based on the figures he suggested, because the game simply wouldn't be worth the candle. If for a moment we adopt his 25% running void and £1,800 per car parking space, and we assume an illustrative yield of say 9% for an un-refurbished building, in order to achieve a capital value of £3 million the new owner need only let 75% of the office space at just over £7 per sq ft, with very little risk. It is therefore inconceivable that a purchaser would incur the risks and costs of around £2.8 million to achieve a building worth £5.85 million, when there is almost no net gain. This is especially the case if the purchaser had the profile Mr Evans suggested, and which we find persuasive, i.e. that the most likely purchaser would be a speculator who would seek to achieve rental income while effectively playing a waiting game.

65. Mr Massie's approach appeared to us to be to deduct as much as possible from the value of the property, including expenses which in our view are either unrealistic, or simply not justified. He gave no consideration to Mr Evans' view that not all of the office space would require the same level of expenditure, despite relying on Mr Evans for other inputs. Despite assuming a wholesale refurbishment of the whole building, he assumed expenditure on empty rates, which in practice would not be incurred as any properly advised building owner would make a proposal to take the property out of the rating list (or seek a nominal rateable value of £1) for the duration of the works. We came to the conclusion that Mr Massie had not considered the value of City Wharf on an objective basis or as a potential purchaser would have done.

66. Mr Massie cross checked his valuation by reference to comparable office sales in Manchester. He referred to six transactions, ranging from the sale of 9 Portland Street, in December 2013, at £67 per sq ft, to the sale of London Scottish House in January 2015 at £129 per sq ft. But his core tone was £67 to £91 per sq ft, and Mr Massie considered that his residual valuation, equating to £76 per sq ft, lay comfortably within that range.

67. He also cross-checked against site value, but with reference to only three sales, ranging from £1.54m to £5m per acre. Rightly in our view, he noted that this method is considerably less reliable owing to the variations on the potential development value. We place no weight on site sales values.

68. It follows from what we have said that we are not persuaded that either Mr King's valuation at £6.115 million, or Mr Massie's at £3 million, is a reliable assessment of the value of City Wharf on the valuation date on the assumption that it would be retained and refurbished. We have therefore looked elsewhere in the evidence for reliable material on which to base our own valuation. We have relied in particular on the helpful expert report provided by Mr Evans who impressed us with the depth of his experience of the Manchester office market.

69. Mr Evans noted that the take up of office space in 2014 was 1.332 million sq ft, compared with a 10-year average of 944 million. At the valuation date, he said, occupier confidence was returning, and there was an expectation of a strong level of demand. In 2014, the majority of deals were in the 'mid-tier' market, with rents of below £25 per sq ft. From the figures he provided, we calculate that 55% of those were in the sub-£15 per sq ft sector. So, there was plainly demand for second-hand offices. In addition to Riverside, Mr Evans gave details of a letting of 8,485 sq ft of space at Deva City Office Park in May 2014 at £14.00 per sq ft. He described that location as 'fringe', and the building as being an average quality refurbishment.

70. From the material available to us, including the photographs and the Knight Frank valuation report, we do not find City Wharf to have been in a derelict condition at the valuation date, or anything approaching that. It had been occupied until shortly before the acquisition date and only became vacant as a result of the CPO. Some refurbishment would have been required, undoubtedly, but we are not persuaded that wholesale refurbishment, as costed by Mr Bordill, would have been necessary in order to let the building.

71. The Knight Frank secured lending report of March 2007 shows that, with the exception of the third floor, City Wharf was fully let at rents touching up to £13 per sq ft, which matched Knight Frank's assessment of rental value at that time. The car parking spaces were each let at £2,000. Between 2007 and 2015 the property market had endured the global financial crash of 2008 and a number of years of over-supply and stagnation, so we do not find the Knight Frank report useful for its judgments on the market, but we are prepared to rely on its factual accuracy about passing rents.

72. Doing the best we can with what we have, it seems to us that the space would have been lettable at a rent greater than the rates of around £12 per sq ft achieved in 2007, in a rising market, and have adopted £15 per sq ft. That rate is consistent with the levels of rent achieved at the Riverside complex where refurbished space was letting for £16 per sq ft in April 2014. It is also the figure which Mr Evans considered a purchaser would anticipate achieving. Some refurbishment of the common parts and entrance area would have been required. But in this second-hand market the evidence shows that there was sufficient demand to be able to let suites on some flexible basis, perhaps with rent free periods or other incentives. Additionally, we are satisfied that all of the 43 underground car parking spaces would let at £2,000 each. As with the offices, we see no reason to attribute a lesser rate to them than passing in 2007.

73. Using a net internal area of 41,262 sq ft of which 75% would let, and 43 car parking spaces, we arrive at a headline rental value of say £465,000 for the offices, and £86,000 for the car park. We accept Mr Evans' evidence that 75% of the space would be let within 2 years of refurbishment and that there would be a permanent rolling void averaging 25%. That doesn't mean that all of the rental income would be delayed until the end of two years, and we have deferred half of the rent by one year, and the remainder by two years. The car parking, which only offers one space per 1,000 sq ft, would let more rapidly, either to the earlier office occupiers or other parties requiring covered space within walking distance of Spinningfields. We have deferred the car parking income by three months.

74. As for yield, we accept Mr Evans' evidence that an appropriate yield would be in the order of 7.5% for refurbished space. His assessment was based on evidence of let investment sales, whereas here we are dealing with a purchase with vacant possession, of a building where significant expenditure will be required, and which we consider the purchaser would value on a fairly broad-brush basis. We have adopted a basic yield of 7.5%, without subsequently allowing for purchaser's costs, which results in a capital value of just over £6.68 million. From this, the cost of refurbishment must be deducted, and here we can only do the best we can from the evidence. Mr Fraser criticised the respondent's evidence on refurbishment costs but tendered no alternative evidence on behalf of the claimant.

75. Mr Bordill was a credible witness whose evidence was objective. We are satisfied that his estimate of the cost of a full refurbishment is reliable. But we do not consider that the likely purchaser would be prepared, or find it necessary, to incur the cost which Mr Bordill suggests to let the majority of the space on short term leases, with one eye on future redevelopment. Mr Evans agreed that a speculative purchaser would take a view on the rental stream which could be achieved and the expenditure required to secure it with minimal voids and would aim to spend only what was necessary.

76. Having considered Mr Bordill's itemised schedule of works, we do not believe that the notional purchaser would be prepared to spend as much as he has assumed on the replacement of air-conditioning units at £105,000, the replacement of the reception desk at £25,000, and overhauling the M&E installations at £500,000. Other areas are also likely to be susceptible to savings or offering tenants some modest rent free period to carry out themselves, for instance the redecoration of individual office suites. The refurbishment would, in our view, be of a budget nature sufficient to get the office space away at the rent we have assumed. To reflect this assumption we have reduced the total amount costed by Mr Bordill by approximately one third and have adopted a figure of £1.6 million. Deducting that from the £6.68 million, we arrive at £5.08 million. However, having agreed with Mr Evan's characterisation of the likely purchaser, we consider a modest element of hope value, at say 10%, would also be payable. We therefore determine the value of City Wharf at the valuation date to be £5.5 million.

77. This figure therefore forms the benchmark against which the valuation of the Timec permission can be compared.

*The Timec permission*

78. Mr King and Mr Massie were able to agree the broad valuation approach to the value of the reference land on the assumption that it was being acquired by a purchaser who

intended to redevelop it straight away along the lines of the consented scheme. Both valued by reference to the Timec permission, adopting the residual method of valuation with assistance from the Argus Developer computer programme. Their respective valuations were then produced in such a way as to enable us to compare the various components of revenue and costs against each other.

79. There was some common ground. So far as the hotel element was concerned, both adopted the agreed position of Mr Holt-Wilson and Mr Stoyle, that the capital value of the hotel was £29,150,000. Curiously, the hotel valuers had assumed that the hotel would be ready to open its doors on the valuation date – ignoring the fact that City Wharf would need to be demolished and the Timec permission built out. But since both Mr King and Mr Massie were content to proceed on that basis, we say no more about it. Mr King and Mr Massie also agreed the rental value of the retail element, at £90,420 per annum, and the car parking at £46,000 per annum for the 23 spaces.

80. The total floor area of the twelve floors of offices was agreed at 108,174 sq ft. There was also a consensus that the lower floors would be let before the upper floors and at lower rents, and that rent-free periods would be offered in each case to secure lettings. The valuers did not agree on the rents themselves, the rent free periods required to achieve them, the net initial yield that should be applied, or the deferred and incentivised rental streams which should be used to arrive at a gross development value ("GDV") for the entire scheme. Mr King assessed the GDV of the Timec permission at just over £76.7 million, Mr Massie at just over £60 million.

81. As for outlay, the valuers relied on Mr Wilson and Mr Bordill's very helpful agreement that the anticipated construction cost should be taken to be £47,065,042. It was also common ground that planning contributions would add a further £205,000, and that £100,000 should be allowed for marketing the development. The fee percentages that would be charged by agents and lawyers for letting the space were agreed at 15% and 5% respectively (although the resulting amounts varied as they were factors of rental values, which were not agreed). The appropriate rate for finance was also agreed at 6%.

82. The costs which remained at issue were disposal fees, and the profit which the notional developer would require, Mr King's 15% on cost versus Mr Massie's 17.5%.

83. When Mr King's GDV was reduced by his outlay figures the result was a residual land value of £9.93 million net of purchaser's costs. Mr Massie's calculations resulted in effectively a nil land value, producing a notionally negative £2.37 million.

84. In arriving at their GDV's, Mr King relied on the evidence of Mr Peter Skelton as to rental levels and incentives, while Mr Massie adopted the evidence of Mr Evans. Mr Skelton and Mr Evans produced a helpful joint table of eleven transactions on Grade A offices that took place between January 2014 and February 2015. The headline rents ranged from £20-£21.50 per sq ft at Piccadilly Place and The Peninsula, £29.50 per sq ft at St Peter's Square, and £30 per sq ft at Hardman Square, Spinningfields. Mr Skelton considered that the rental value of the Timec permission building would be £26 per sq ft for floors 1-4, £27 per sq ft for floors 5-7, and £28 per sq ft for the top five floors 8-12. Mr Evans adopted £22.50 per sq ft for floors 1-9, and £23 per sq ft for floors 10-12.

85. Mr Skelton's view was that floors 1-7 would have been let by practical completion, and to do so rent-free periods of 36 months would be granted for floors 1-4, and 30 months for floors 5-7; floors 8-10 would be let within 12 months of completion, attracting rent free periods of 24 months; and floors 11-12 would be let within 24 months, with rent free periods of 24 months. Mr Evans' evidence was that there would be no lettings pre-completion, that the development would take 3-4 years to achieve 100% occupancy, and that the initial lettings would require a 36-month rent-free period, and later lettings 30-month rent-free periods.

86. In cross examination and submissions Mr Glover QC suggested that the claimant's expert witnesses failed to make a proper assessment of the condition of Salford Central on the assumption that the CPO scheme had not proceeded. There is considerable force in that suggestion. Mr Peter Skelton, in particular, had clearly not been properly briefed by others on the assumptions he ought to make when preparing his evidence about the rental value of new offices on the reference land. He was a knowledgeable witness with much relevant personal experience of the Manchester office market. But he was left in the embarrassing position of having to acknowledge in the witness box that his original report had been written under the misapprehension that he was to assume the reference land was located in Salford Central as it was in reality on the valuation date, rather than in Salford Central as it must be assumed to have been on the no-scheme hypothesis. For example, he referred to the reference land as "being in a highly visible location *and with One New Bailey* [developed as part of the Scheme] *already on site and being actively promoted, it had already been recognised by the property market as a logical extension to Spinningfields.*"

87. Although Mr Skelton tried to rescue the situation by suggesting that the value of new office space would have been no different in the no-scheme world, that was not a remotely credible proposition. BUPA's nervousness at the prospect of relocating to Zone B without the guarantee of comprehensive redevelopment of the whole area is enough to demonstrate that. Having already committed himself to an assessment of value which focussed on the transformative effect of the emerging New Bailey Quarter it was quite impossible for Mr Skelton to persuade us that, on second thoughts, none of it made a penny's difference. As a result, and despite his obvious knowledge of rental values in the real world, we were unable to place any weight on the opinions expressed by Mr Skelton.

88. In contrast, we found Mr Evans' evidence to be persuasive. He is equally experienced in the Manchester office market, and having acted for both developers and occupiers, he was able to speak to much of the evidence from first-hand experience. While Mr Fraser was able to point to some arithmetical errors in his report, overall, we found Mr Evans to be a knowledgeable and credible witness.

89. The difficulty for the claimant is that Mr King very firmly pinned his colours to Mr Skelton's mast and deferred to his knowledge and experience of the Manchester office letting market in every regard. With over 36 years' valuation and compulsory purchase compensation experience Mr King might have been expected to realise that Mr Skelton had not been properly briefed and that his written evidence did not take account of the important differences between the no-scheme world and the real world at the valuation date. Yet Mr King described Mr Skelton's opinions and observations as aligned with his own and explicitly adopted them.

90. At times Mr King's grasp of the features of the no-scheme world was equally unsteady. On the one hand he considered that the development potential of the reference land was "fundamentally underpin[ned]" by the planning policies seeking comprehensive regeneration of Salford Central and specifically by the planning permission for the scheme itself. On the other hand, he agreed that, on the no-scheme assumption, a purchaser of City Wharf would not envisage the redevelopment of surrounding sites under the influence of market forces alone. It was difficult for the Tribunal to reconcile these apparently conflicting positions.

91. We place no weight on the evidence of Mr Skelton because the rental levels, incentives and letting velocity he spoke of assumed that the Timec consent would be implemented side by side with the larger CPO scheme. Mr King explicitly adopted Mr Skelton's figures and his evidence on those matters is accordingly tainted by the same valuation heresy and is fundamentally unreliable.

92. After the conclusion of the evidence we undertook an external inspection of the buildings relied on as comparables by both parties. Having done so we reject Mr Fraser's criticism of the weight given by Mr Evans to First Street, which we do not accept is in an inferior location. Nor do we regard the rents achieved at Spinningfields as a reliable indicator of what might have been anticipated for Timec's development in the no-scheme world. As a result, we accept Mr Evans' evidence on the critical topics on which he and Mr Skelton had disagreed; not only does it appear to us that Mr Evans' evidence was objective, well researched and credible, but it was also founded on a proper appreciation of the statutory valuation hypothesis.

93. Basing himself on Mr Evans' evidence, Mr Massie adopted an overall average rent-free period of 33 months across the offices. He assumed that floors 1-3 would let on completion, floors 4-6 at the end of the first year, and floors 7-9 and 10-12 in subsequent years. We accept that approach as reasonable.

94. We heard little if any evidence concerning the ground floor retail units. Mr Massie's view that they would take up to three years to let strikes us as overly pessimistic, bearing in mind the likely number of occupiers in the building as it lets up, and potential visitors to the adjacent hotel. We have adopted an average letting period of nine months, with each letting including the agreed six-month rent-free period.

95. Taking stock at this stage we are satisfied that we need go no further in deciding the remaining factors at issue. Even if we prefer Mr King's net initial yield of 5.5% and his developer's profit of 15%, over Mr Massie's 6.5% and 17.5%, a residual land value in the order of £3.8m would be arrived at. Other peripheral elements, for instance disposal costs on the hotel, would make no material difference because the resulting land value assuming demolition and the construction of the consented scheme is already less than our valuation of City Wharf as a refurbishment prospect. We do not consider that any prudent purchaser would realistically base their bid on the value of the Timec permission without the prospect of the surrounding land being comprehensively redeveloped in step with their own redevelopment of the reference land. Without the Salford Central CPO scheme, which must be ignored, there was no such prospect.

96. As a result, despite its proximity to Spinningfields, and high demand for Grade A office space in the city centre (higher still in the no scheme world without the New Bailey quarter), we are satisfied that the market would have continued to view the reference land as a fringe location. BUPA had ruled the site out in 2012 because of the risk that it might be marooned there if comprehensive redevelopment did not proceed; we accept Mr Fraser's submission that the market had improved significantly by February 2015, but we can see no reason why that improvement would have increased the appetite of BUPA, or other Grade A office occupiers, for a peripheral site with only the tax collectors of Ralli Quays and the small firms of Ralli Court as neighbours. Despite its proximity to Spinningfields we have no doubt that, in the no-scheme world, the reference land would have been regarded by the market as incapable, at that time, of sustaining the rental values required to justify the cost of developing a high quality office and hotel scheme.

97. We have concluded that, at the valuation date, there was no prospect of a purchaser acquiring City Wharf with a view to its demolition and the implementation of the consented scheme. We have also concluded that the most likely purchaser would have been a speculator who would have envisaged undertaking a light touch refurbishment before letting the building to less demanding tenants than those across the river at Spinningfields. The final question is whether such a purchaser would have been prepared to pay anything more than the figure of around £5 million which represents the value of the building before light touch refurbishment had taken place. We consider the successful purchaser would have paid around 10% above that figure to secure the opportunity.

**Conclusion**

98. We therefore determine the compensation payable to the claimant as follows:

| | | |
|---|---|---|
| Compensation under Rule 2: | £5,500,000 | |
| Rule 6 fees: | £22,500 | |
| Basic Loss: | £75,000 | |
| Total | | £5,597,500 |

Plus interest to be calculated, if any.

Martin Rodger QC
Deputy Chamber President

Peter D McCrea FRICS

5 November 2021

**Right of appeal**

Any party to this case has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.