ACQ/76/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – retail premises – acquired for comprehensive redevelopment – comparables – relevance of rent payable prior to claimants' purchase of freehold – relevance of prices paid for properties purchased under shadow of CPO – surveyor's fees – compensation awarded £141,500

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**(1) JOHN DENNIS McCARTHY** **(2) PAULINE McCARTHY**	**Claimants**
	and	
	BOROUGH OF PENDLE	**Acquiring Authority**

Re: 8 Market Street
Nelson
Lancashire
BB9 7 LJ

Before: N J Rose FRICS

Sitting at VAT & Duties Tribunal, 9th Floor, West Point, 501 Chester Road, Old Trafford, Manchester, M16 9HU
on 5 and 25 September 2007
and at Town Hall, Market Street, Nelson, Lancashire, BB9 7LG
on 3 October 2007

John Barrett, instructed by Farnworth Shaw, solicitors of Colne for the Claimants
Robert Darbyshire, instructed by Pendle Borough Council, for the Acquiring Authority

The following cases were referred to in argument:

Horn v Sunderland Corp [1941] 2KB 26
Sceneout Ltd v Central Manchester Development Corp [1995] 2 EGLR 179
Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111

DECISION

1. This is a reference by the claimants, Mr John Dennis McCarthy and Mrs Pauline McCarthy, to determine the amount of compensation payable for the freehold interest in a shop property known as 8 Market Street, Nelson, Lancashire, BB9 7LJ. That property was compulsorily acquired under the Borough of Pendle (The Grand, Nelson) Compulsory Purchase Order 2004, which was made under section 226(1)(a) of the Town and Country Planning Act 1990 on 29 September 2004 and confirmed by the First Secretary of State on 4 August 2005. A general vesting declaration was made on 10 October 2005 and the freehold interest vested in the acquiring authority, the Borough Council of Pendle, on 9 November 2005, which is the valuation date.

2. The claimants used the property for retail and ancillary purposes. The ground floor was used for the sale of household goods, fancy goods and some pharmaceuticals and the first floor for the sale of pictures and larger household items such as coffee tables and light fittings. The claimants were unable to find suitable alternative premises and compensation for the total extinguishment of their business has been agreed at £80,000. Before me the amount claimed for the freehold interest was £206,018. The acquiring authority's figure was £100,000.

3. Mr John Barrett of counsel appeared for the claimants. He called one of them, Mrs McCarthy, as a witness of fact and one expert witness, Mr David Briffett, BSc (Hons) MRICS, the managing director of Thomas V Shaw & Co Ltd, chartered surveyors and commercial property consultants of Blackburn. Counsel for the acquiring authority, Mr Robert Darbyshire, also called one expert, Mrs Glenys Barnes, MRICS, who has been employed by the acquiring authority for 22 years and is currently with Liberata Property Services, to whom certain services have recently been outsourced by the council. The subject property has been demolished. I visited Market Street and the surrounding area in company with the two experts on 3 October 2007 and inspected a number of properties which had been cited as providing comparable evidence. Most of these inspections were external only, although one comparable property, 14/16 Market Square, was also inspected internally.

Facts

4. The subject property was situated in a good secondary shopping position in Nelson. Market Street is a pedestrianised road in the centre of the town. It runs from Cross Street at its north-western end to Scotland Road at its south-eastern end where it emerges opposite Pendle Rise shopping centre, the prime retail pitch in the town. The shopping frontage on the north-eastern side of Market Street was interrupted three doors north-west of Scotland Road by Back Scotland Road. Between Cross Street and Back Scotland Road was a terrace of five shops, Nos. 30 to 22 Market Street, then the Grand Cinema (which included a number of shops fronting the road) and then a further terrace of five shops, Nos. 10 to 2. The cinema was destroyed by fire on 29 May 2000 and 10 Market Street suffered resultant fire damage. The three shops between Back Scotland Road and Scotland Road still exist – they are known as 7 and 5 Market Street and 1/3 Scotland Road. The frontage on the opposite side of Market Street

has at all material times been occupied (from north-west to south-east) by Nelson Town Hall, an office building and the Lord Nelson public house which overlooks Pendle Rise.

5. The subject property was constructed in the early 20th century of stone under a timber framed slate covered roof. It comprised a retail shop with a rear stockroom and office on the ground floor, a showroom, kitchen and store on the first floor and a cellar. A trap door, giving access to the wooden staircase down to the cellar, was situated at the back of the shop in an area which was not open to the public. The cellar had a floor of old fashioned paving stones, and shelving on two walls. It was used on a daily basis for storage in connection with the claimants' business. The shop was fully alarmed and had roller shutters on the front elevation. There was a glazed Victorian veranda above the pavement in front of the property, beneath which the claimants displayed their wares. The approximate net internal floor areas were as follows:

Ground Floor:	Retail Zone A	29.70 m^2
	Retail Zone B	24.40
	Retail Zone C	2.10
	Store	16.30
	Office	15.00
	W.C.	–
First Floor	Display	49.40
	Store	16.70
	Kitchen	7.60
	W.C.	–
Cellar	Store	56.74 m^2
		217.94 m^2

The stated area of the ground floor shop excludes the space taken up by the well of a staircase leading to the first floor. Part of this space was used for the display of goods.

6. Mrs McCarthy first worked at the subject property in about 1993, when she was employed as a sales assistant. Her employers occupied the premises under the terms of a lease which was due to expire in 2000. The rent then payable under the lease was £12,000 per annum exclusive. The lessees planned to retire when the lease ended and they invited the claimants to take over the business as a going concern. The landlord was willing to grant the claimants a new lease at the rent previously payable, but no less. The claimants considered that the business could sustain that rent. They purchased the business and, on 29 September 2000, they took a new full repairing and insuring lease for 9 years from 24 June 2000 at £12,000 per annum exclusive, with upwards rent reviews after 3 and 6 years. On 12 July 2002 the claimants purchased the freehold interest from their landlord for £50,000.

7. In January 2001, some eight months after the Grand Cinema had been destroyed, the acquiring authority published a document entitled "Planning Brief Grand Cinema Site". This proposed that the site should be redeveloped on a comprehensive basis. In March 2003 the acquiring authority started to purchase properties required for that redevelopment in advance of the CPO. Following the general vesting declaration, outline planning permission was granted

on 6 December 2005 for a new office building on the CPO site, together with two large ground floor shops fronting Market Street. The development is a commercial venture, undertaken jointly by Barnfield Properties Ltd and Liberata UK Ltd. The cost of between £6m and £8m is not dependent upon public funding.

Evidence of Mr Briffett

8. Mr Briffett considered that the best guide to the rental value of the subject property in the no scheme world was provided by the rent of £13,921 which, according to their accounts, was paid by the claimants in 2002, before they purchased the freehold interest. He pointed out that the RICS Commercial Property Survey for the final quarter of 2005 showed that capital values throughout the UK had increased on average by 11.6% in 2004 and 12% in 2005. He considered that values in North East Lancashire had increased at a faster rate.

9. Mr Briffett did not think any weight should be placed on the rents paid for other properties within the scheme, nor on the prices at which the acquiring authority had purchased such properties. In his opinion the rentals passing in the immediate area reflected the certainty of future demolition and the knowledge that, if a unit became vacant, it would be difficult to re-let because of the threat of the CPO. He produced a schedule of available properties circulated by the acquiring authority in November 2005. This showed that there was very little commercial property in the town centre outside the CPO area available for sale on a freehold basis at the valuation date.

10. In Mr Briffett's view, in the no scheme world a purchaser seeking a property investment for a self invested personal pension (SIPP) would have been very interested in the subject property, let to an established business at a rent in excess of £14,000 per annum. He prepared a schedule of a number of shops in Nelson which had been sold on a freehold basis between January 2005 and March 2006. He calculated that the sale prices represented the following multiples of the rateable values in the 2005 rating list:

37 Scotland Road	26.88 (£2,417)
41 Every Street	57.47 (£2,370)
43 Scotland Road	37.07 (£3,333)
281 Leeds Road	30.76 (not provided)
14/16 Market Square	26.39 (£2,267)
15 Manchester Road	20.11 (£3,594)

11. The figures in brackets represent the prices paid (or, in the case of 43 Scotland Road, quoted) per m^2 in terms of zone A. Mr Briffett said that, at the commencement of the 2005 rating list (which he subsequently corrected to the 2000 list), the rateable value of the subject property was £6,500. This was subsequently reduced to £4,900 in the 2005 list, and Mr Briffett said that the reduction reflected the effects of the scheme.

12. Apart from the rent payable in 2002 for the subject property Mr Briffett said that there was limited reliable rental evidence available. He referred to two rents. Firstly, that of £9,000 per annum payable for 41 Every Street, which was more than four times the shop's rateable value of £2,175. Secondly, the rent of £3,900 per annum payable for 5 Russell Street, a small corner shop, which was equivalent to £114 per m^2 in terms of zone A, or 2.28 times the rating basis of £50 adopted by the valuation officer.

13. The rating assessment of the subject property (RV £4,900) was based on a value of £100 per m^2 in term of zone A. Mr Briffett said that, if this basis were multiplied by 2.28 in line with the evidence of 5 Russell Street, it produced a zone A value of £228 per m^2, indicating a rental value of £14,820 per annum for the subject property.

14. In order to arrive at the capital value Mr Briffett calculated the average of the multipliers referred to in paragraph 10 above, excluding the highest and lowest figures. This produced a multiplier of 30.27 which, applied to the "correct" RV of £6,500, produced a value of £196,755. To this he added £7,263 to reflect the external display facilities beneath the glazed canopy at the front of the shop and £2,000 for the car parking space at the rear, producing a total value of £206,018.

15. In support of this valuation, Mr Briffett said that anyone seeking a freehold shop in the centre of Nelson at the valuation date would only have been offered two alternatives. The first, 43 Scotland Road, was a three storey building without a forecourt display or rear parking, further from the town centre in a poorer location. The asking price was £165,000 and the claimants had considered the property to be unsuitable for their requirements. The second property, 14/16 Market Square, was a two storey refurbished building, much smaller than the subject property and in an even worse location than 43 Scotland Road. At the valuation date the business conducted at 14/16 Market Square was being offered as a going concern for £147,500 to include the freehold, plus stock at valuation. A buyer could not be found for the business but three months later, in February 2006, the freehold interest was sold with vacant possession at auction for £151,000.

16. Mr Briffett also considered the value of the subject property as an investment. In his opinion, if the claimants had sold their business and retained the freehold interest, they would have obtained a rent of £14,000 per annum. This was a reasonable figure bearing in mind the rent actually paid for the property in 2002 and the fact that, in the absence of the scheme, rental values would have increased by the valuation date. On the basis of gross yields of 7% and 8%, the freehold interest would have been worth £199,920 or £185,250 respectively. Since these values were less than the vacant possession value of £206,018, the claimants were entitled to the latter figure.

Evidence of Mrs Barnes

17. Mrs Barnes pointed out that when the acquiring authority first acquired properties in Market Street by agreement in 2003, the road included a large vacant site – formerly occupied

by the Grand Cinema – and five vacant shops out of a total of ten between Cross Street and Back Scotland Road. She produced a copy of a report on Nelson, prepared by FOCUS in July 2006. This suggested that rents in the best trading locations in the town fell from £35 per sq ft in terms of zone A in 1999 to £30 per sq ft between June 2000 and 2005. The report demonstrated that Nelson was not ranked as a prime retail centre. No national retailers were represented on Market Street.

18. In Mrs Barnes's opinion the rental value of the subject property at the valuation date was in the region for £8,500 per annum. In support of this view she referred to a number of comparables. The first was the adjoining property, No.6, which was of similar size on the ground and first floors. The acquiring authority purchased the freehold in No.6 on 13 March 2005. The rent payable at that time was £8,000 per annum and the landlords were quoting a rent of £8,500 for the forthcoming review.

19. 4 Market Street was purchased by the acquiring authority in April 2003. The rent payable at that time for the ground floor was £6,750 per annum for approximately 65m^2 of retail space and an office and kitchen of some 32m^2.

20. In November 2005 15 Manchester Road was let for 15 years at a commencing rent of £18,000 per annum. The shop was in a superior trading location, opposite Wilkinsons and Woolworths. It consisted of approximately 133m^2 of retail space on the ground floor and first floor accommodation of some 100m^2. The ground floor retail area was almost 2½ times that at the subject property. This evidence suggested a rental value of the order of £7,500 per annum for the subject property. Mrs Barnes considered that the rent of £13,921, shown in the claimants' accounts as having been paid as rent in the year prior to their purchase of the freehold interest, was much higher than the market rent.

21. She referred to four properties outside the CPO area as providing evidence of capital value. These may be summarised as follows:

87 Scotland Road.	
Former art shop on ground floor totalling 87.4m^2 plus first floor flat. Sold in September 2005 for	£90,101
15 Manchester Road	
Much larger property, sub-let to multiple bookmakers trading throughout the region. Head lease sold in November 2005 for	£137,500
37 Scotland Road	
Larger property on pedestrianised street in central Nelson. Sold in February 2005 for	£125,000

43 Scotland Road

Recently refurbished property on pedestrianised street in central Nelson, containing larger sales areas on ground and first floors and with additional accommodation on second floor. Advertised for sale in June 2005 at £165,000. Unsold over one year later.

22. Mrs Barnes said that this evidence showed a range of sale prices for retail properties in 2005 and 2006 between £90,000 and £137,500.

23. In the course of her oral evidence in chief Mrs Barnes made a number of significant amendments to the information contained in her expert report. She accepted that she had not referred to the sale of 14/16 Market Street for £151,000 in February 2006, although she had been aware of it when she finalised her report. Similarly, she had been aware of the resale of 15 Manchester Road in March 2006, subject to the same lease to the bookmaker, for £357,000 but she had not mentioned it in her report. Finally, she said that the asking price for 43 Scotland Road had been increased from £165,000 to £185,000 upon change of agents in 2006. A different company was now trading from that property, but she was not aware of the basis of the new occupation. Mrs Barnes's failure to provide the Tribunal with all the relevant information in her possession until such a late stage in the proceedings is regrettable.

24. Finally, Mrs Barnes referred to a number of transactions within the CPO Area. 2 and 4 Market Street were purchased by the acquiring authority in April 2003 for £75,000. The ground floor shop at No.4 was let on internal repairing terms at £6,750 per annum. The remainder of the building was vacant and in disrepair. 6 Market Street was let on full repairing terms at £8,000 per annum with a proposed rent review to £8,500. The freehold was sold to the acquiring authority in March 2005 for £100,000. 10 Market Street was sold to the acquiring authority, in fire damaged condition, for £70,000 in December 2004. The freehold interest in the subject property was purchased by the claimants, as sitting tenants, for £50,000 in July 2002.

25. In Mrs Barnes's opinion, the best evidence of the value of the subject property was provided by the sales of 6 and 10 Market Street within one year of the valuation date. They suggested a value for the subject property of £100,000. This figure was consistent with the range of sale prices achieved outside the CPO area. Using the investment method of valuation it represented a rental value of £8,500 capitalised at a gross yield of 8.5%.

The no-scheme world

26. Nelson is not a prime shopping centre. The shops in the town centre serve people living and working in the area and also shoppers who are attracted to the town by the presence of a number of free car parks. With the exception of a large Morrisons store to the west of the town centre all the multiple retailers represented in Nelson occupy units in or very close to Pendle

Rise, which lies approximately 80 metres to the south-east of the subject property. Otherwise retail rental values in Market Street were amongst the highest in the town centre.

27. Until it was destroyed by fire on 29 May 2000 the Grand Cinema occupied about one-quarter of the north-eastern frontage to Market Street. At the time of the fire there was one empty shop in Market Street, No.22, which had been vacant for about 8 months. From January 2001, when the planning brief for the cinema site was published, it was common knowledge that the local planning authority wanted a large section of the north-eastern side of Market Street to be redeveloped comprehensively with other land to the north. Over the next two years it became clear that compulsory purchase powers would be required if the area was to be redeveloped in accordance with the local authority's wishes.

28. In March 2003 the acquiring authority started buying properties in Market Street in advance of a proposed CPO. At that time only five shops were trading in Market Street between the junctions with Cross Street and Back Scotland Street. In a valuation report dated 13 April 2005, prepared on the instructions of Mrs Barnes in connection with the proposed acquisition of 10 Market Street, Messrs Trevor Dawson, chartered surveyors of Blackburn said:

> "this is a property which had suffered fire damage. Over the last twelve months or so there has been strong demand for properties to purchase and, as a result, demand for properties in need of significant renovation and upgrading has increased significantly. As a result, we are of the opinion that if this property was placed upon the market at the present time there would be a strong level of demand."

29. In my judgment, the high vacancy rate in Market Street in the period leading up to the valuation date was a direct result of the blight which had affected the area since the proposals for comprehensive development first became known. Traders were reluctant to acquire units in a road which was likely to be redeveloped. I find that, in the absence of the proposals for comprehensive development underlying the acquisition of the subject property, the cinema site would have been vacant at the valuation date but the remainder of the shops on the north eastern side of Market Street would have continued trading.

Conclusions

30. I consider firstly the evidence relating to properties outside the CPO area. Both experts approached the valuation by direct reference to capital value and also by capitalising the estimated rental value of the subject property. Although a total of seven capital value comparables were referred to, I have come to the conclusion that only one of them, 14/16 Market Square, is of real assistance. My reasons for rejecting the remainder are as follows:

37 Scotland Road

Purchased by existing lessee. Lease details not known.

43 Scotland Road

Quoting prices only. Not sold.

87 Scotland Road

This shop is situated some considerable distance from the town centre. During the site visit Mrs Barnes referred to the car park on the other side of the road as providing a good source of custom. The car park, however, is closer to the town centre than No.87. In the light of my inspection I am satisfied that most people parking there would make their way towards the Kwik Save supermarket immediately to the south and then on to the pedestrianised town centre. Few, if any, would choose to cross the six traffic lanes separating the car park from No.87.

41 Every Street

A tenanted property in a tertiary position outside the town centre.

281 Leeds Road

A shop and flat in a tertiary location, three quarters of a mile from the town centre.

15 Manchester Road

A tenanted property, occupied under an underlease between connected parties. The long leasehold investment was apparently sold twice within four months, firstly for £137,500 and then for £357,000. On both occasions the long lease was apparently subject to the same underlease. Neither expert was able to offer a convincing explanation for the huge difference between the two prices.

31. The remaining capital value comparable, 14/16 Market Square, is located approximately 100 metres to the north-west of the subject property. Market Square has not been pedestrianised. It is a one way street, with free car parking in front of the shops. 14/16 is a double unit which, like the subject property, is on a main pedestrian route between Morrisons and Pendle Rise. It forms part of a parade on the north-east side of the square, directly opposite the side elevation of the main public library.

32. The experts agreed that the subject property was in a more valuable shopping location than Market Square, but they disagreed as to the extent of the difference. Mrs Barnes considered that the respective zone A rates applied by the valuation officer when preparing the 2005 rating list – £100 per m^2 for the subject property and £85 per m^2 for 14/16 Market Square – fairly reflected the respective values. Mr Briffett also relied on the rating assessments. He preferred, however, to look at the RV which was ascribed to the subject property in the 2000 list because, he said, the assessment in the 2005 list was reduced to £100 per m^2 due to the blight caused by the proposed CPO.

33. Any valuation for compensation purposes by reference to rating assessments must be approached with caution. Certainly, Mr Briffett's attempt to compare the values of two properties by comparing the assessment of one in the 2000 list with the assessment of the other

in the 2005 list is misconceived. As for the relative RVs of the subject property and 14/16 Market Street in the 2005 list, it is necessary to bear in mind that the assessments in the compiled list were based on values at 1 April 2003, the antecedent valuation date. Various matters, however, including those affecting the physical state of the locality in which the property was situated, or which were physically manifest there, were to be taken as they in fact were on 1 April 2005. For the purposes of the current exercise, by contrast, levels of value and physical matters both fall to be considered assuming the no scheme world which I have described above, and based on values at 9 November 2005.

34. All that said, my conclusion in the light of all the evidence and in particular my site inspection is that the respective zone A rates in the 2005 rating list, that is £100 per m^2 for the subject property and £85 per m^2 for 14/16 Market Square, reasonably reflect the relative values of the two properties in the no scheme world.

35. As previously mentioned, Mrs Barnes did not refer to the sale of 14/16 Market Square in her expert report. In her evidence in chief, however, she suggested that the price of £151,000 achieved for that property in February 2006 had been increased as a result of the proposed redevelopment of the CPO area. Asked to quantify the extent of the increase she replied:

> "I would not want to put a definitive percentage on hope value. But it could quite easily be 15% to 20% if not more. It is very subjective."

36. I consider it unlikely that the purchaser of 14/16 Market Square would have attributed any value to the prospect of its business benefiting from the proposed new development in Market Street and, in particular, from the office workers who would be employed there. The reasons for this view are as follows. Firstly, at the date of sale there was no certainty when the new development would be completed and let. Detailed planning consent had not yet been obtained and, at the time of my inspection 18 months later, the development had still not been completed. Secondly, it is likely that any eventual benefit would be offset at least to some extent by the additional competition generated by two modern shop units in the new development, one at least of which would be very much larger than the shops in Market Square or those previously in Market Street. Thirdly, and most importantly, if the benefits resulting from the new development were likely to be anywhere near those suggested by Mrs Barnes, one would have expected the matter to have been mentioned in the agents' particulars prepared by Mr Briffett's firm when marketing the existing business in late 2005, or by the auctioneers who sold the building with vacant possession a few months later. In fact, no such mention was made on either occasion. I conclude, therefore, that no adjustment should be made to the sale price of 14/16 Market Square to reflect the effects of the scheme. Although Mrs Barnes did not suggest that there was any material valuation significance to the three months difference between the valuation date and the sale of 14/16 Market Square, I shall reduce the price marginally to £150,000 to reflect the passage of time.

37. Unlike the subject property, 14/16 Market Square does not have a cellar. Mr Briffett suggested that the rental value of the cellar at the subject property was one sixteenth of the zone A rate. Mrs Barnes ascribed no value to the cellar, because of the poor access and the absence of a damp proof course. In the light of Mrs McCarthy's evidence, I am satisfied that

the absence of a DPC did not render the cellar unusable. The restricted access via a trap door, however, would have reduced its value on the open market. I find that the cellar was worth one twenty-fifth of the zone A rate.

38. Mr Briffett considered that the first floor showroom at the subject property was much more valuable than the first floor at 14/16 Market Square, even though the latter was used for the display of wallpapers at the time of the sale. Mrs Barnes felt that there was no difference in value. In the light of my inspection I have no doubt that Mr Briffett is right. There was a wide, double dogleg staircase leading directly from the ground floor shop to the first floor of the subject property. Its nature and position were such that customers were encouraged to make their way to inspect goods at the upper level. In the case of 14/16 Market Square, on the other hand, access to the first floor is by a narrow, single flight of steps, which is hidden from customers by a wooden door. I find that the first floor showroom at the subject property was twice as valuable as the first floor at 14/16 Market Square. I do not consider, however, that Mr Briffett was justified in attributing a separate value to the ground floor area beneath the staircase.

39. Mr Briffett made two further additions to his valuation of the subject property, in respect of the rear car parking facilities and the potential for covered display on the pavement in front of the shop. I do not think these additions are justified. Neither area fell within the claimants' freehold ownership. The parking facilities at the rear of the subject property were no better than those in the carriageway at the rear of 14/16 Market Square, to which no separate value has been attributed. As for the potential to display goods on the pavement in front of the subject property, this has been reflected in my conclusion as to the relative zone A values of the two properties.

40. My analysis of the sale price of 14/16 Market Square is as follows:

	Area ITZA (m^2)
Ground floor	
Retail Zone A 52.70 m^2 @ 1	52.70
Retail Zone B 20.70 m^2 @ 1/2	10.35
Kitchen 7.80 m^2 @ 1/10	0.78
WCs	Nil
First Floor	
Storage 69.30 m^2 @ 1/20	3.46
	67.29 m^2

Analysis of sale price: 67.29 m^2 ITZA @ £2,229.15 m^2 = £150,000. The equivalent value of the subject property by reference to the price paid for 14/16 Market Square is £2,622.50 per m^2 (£2,229.15 x 100/85), or £141,500, calculated as follows:

	Area ITZA (m^2)
Ground floor	
Retail Zone A 29.70m^2 @ 1	29.70
Retail Zone B 24.40 @1/2	12.20
Retail Zone C 2.10 @ ¼	0.52
Storage 16.30 @ 1/10	1.63
Office 15.00 @1/10	1.50
WC N/A	Nil
First floor	
Display 49.40 m^2 @ 1/10	4.94
Storage 16.70 @ 1/20	0.84
Kitchen 7.60 @ 1/20	0.38
WC N/A	Nil
Cellar	
Storage 56.74 @ 1/25	2.27
	53.98 m^2

Valuation: 53.98 m^2 ITZA @ £2,622.50 = £141,562

Say £141,500

41. I now turn to the value based on a capitalisation of the rental value of the subject property. Mr Briffett approached this aspect of the valuation on the basis that, in the absence of the CPO, the claimants could have sold the business for £80,000, retaining the freehold and granting a new lease to the purchaser. He said that the rent reserved under the new lease would have reflected the amount which had been paid in the past by the claimants and their proven ability to afford that rent. He asked rhetorically why they would have agreed to a rent at the level suggested by the acquiring authority, £8,500, when they had themselves paid £13,921 in 2002. The starting rent would, he suggested, have been £14,000.

42. In fact, it is clear from the evidence of Mrs McCarthy and from the copy lease with which I was provided that the rent payable in 2002 was £12,000 per annum, not £13,921. Although it is not necessary for me to decide the point, it appears likely that the additional £1,921 shown in the accounts reflected insurance premiums, which were payable by way of "further rent". As is also clear from Mrs McCarthy's evidence, the rent of £12,000 which was agreed in 2000 was not the result of an open market letting, but was insisted upon by the landlord at a time when terms were being negotiated for the sale of the existing business.

43. Only two achieved open market rents – as opposed to asking rents – have been referred to as illustrating the level of rents outside the CPO area (the third rent for a shop outside Market Street was for 5 Russell Street, which was compulsorily acquired). I have not found it possible to identify any pattern in these two rents. The figure of £9,000 per annum paid for 41 Every Street, in a tertiary location, is equivalent to £196 per m^2 in terms of zone A. The rent of £18,000 paid for 15 Manchester Road, which is in one of the best positions in the town centre,

is only £181 per m^2 in terms of zone A. I am sure that the true rental value of 15 Manchester Road is very much higher than that of 41 Every Street, but the evidence is inadequate to show which, if either, of the two rents provides an accurate indication of value. Indeed, it may be that neither does. The tenant of 41 Every Street has not traded at the property since 2003 and the letting of 15 Manchester Road appears to have been between connected parties. Mr Briffett may have been right to suggest that the rents agreed for shops in Market Street – upon which Mrs Barnes based her valuation of £8,500 – were depressed as a result of the scheme. The onus, however, is on the claimants to prove their claim and, in this respect, I do not consider that it has been discharged. I therefore find that the rental value of the subject property was £8,500 per annum.

44. Mr Briffett suggested that, if they were to have been willing sellers of their business, the claimants would have insisted on retaining the freehold interest in the subject property as an investment for their pension fund, and on charging the purchasers a rent of £12/14,000 per annum, which their experience showed the business could support. If, at the valuation date, the claimants had held out for a rent in excess of £8,500 per annum, I am not persuaded that they would have been able to dispose of their business without adversely affecting its value. Since the claimants have received full compensation for the loss of their business, to base compensation for the freehold on a rent in excess of that obtainable on the open market would mean that the claimants would receive more compensation than the loss they have suffered. They are not entitled to do so. The rental value of the subject property should therefore be taken at £8,500 per annum for the purpose of assessing its value on the investment basis.

45. Assuming in Mr Briffett's favour that the subject property's rental value should be capitalised at a gross yield of 7%, the capital value based on the investment approach would be only £121,428, which is lower than the figure at which I have arrived based on the price paid for 14/16 Market Square.

46. It is also necessary for me to consider the prices paid for properties within the CPO area upon which Mrs Barnes relied. By the close of the hearing it was common ground that the price of £50,000, for which the claimants acquired the freehold interest in their property in July 2002, was out of line with the general market and I therefore disregard it. It was also not in dispute that, if one had regard solely to the prices paid by the acquiring authority for Nos.2 and 4, 6 and 10 Market Street, Mrs Barnes's valuation of £100,000 was not unreasonable. That valuation is well below the figure at which I have arrived by reference to the unblighted sale of 14/16 Market Street. This Tribunal has repeatedly indicated its preference for open market evidence as opposed to values agreed under the shadow of compulsory purchase. Accordingly, I find that the value of the claimants' freehold interest was £141,500.

47. The amount payable for surveyor's fees is in dispute. Mr Briffett asked for these to be calculated on the basis of one and a half times Ryde's scale, which he said he had agreed with the claimants. Mrs Barnes considered that the fee should be based simply upon the appropriate Ryde's scale. I prefer Mrs Barnes's suggestion. Mr Briffett did not produce a detailed calculation to show what he suggested would be a reasonable fee for his work prior to the reference to this Tribunal and he did not confirm his suggested fee basis in writing to the

claimants. Moreover, he has previously accepted a fee for negotiating the claimants' disturbance claim based on Ryde's scale.

48. I determine the compensation payable for the freehold interest in 8 Market Street, Nelson at £141,500. In addition, the acquiring authority will pay a surveyor's fee based on Ryde's scale prior to its abolition. A letter on costs accompanies this decision, which will take effect when the question of costs is decided.

Dated 18 October 2007

N J Rose FRICS