UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – acquisition of former bus garage and yard – valuation – rental values – yield – pre-reference costs - compensation determined at £6,406,257.30

IN THE MATTER of a NOTICE OF REFERENCE

BETWEEN	**PRITAM SINGH & KULDEEP KAUR SINGH**	**Claimants**
	and	
	LONDON DEVELOPMENT AGENCY	**Acquiring Authority**

Re: Former Stability Works, Waterden Road, London E15

Before: P R Francis FRICS

Sitting at: 43/45 Bedford Square, London WC1B 3AS
on
28 & 29 July 2009

Neil King QC, instructed by Bond Pearce LLP, solicitors of Bristol, for the claimants
Richard Honey, instructed by Eversheds, solicitors of London EC4, for the acquiring authority

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DECISION

Introduction

1. This is a decision to determine the compensation payable by the London Development Agency (LDA) to Mr Pritam Singh & Mrs Kuldeep Kaur Singh (the claimants) for the compulsory acquisition of premises and land at former Stability Works, Waterden Road, London E15 (the subject property) under the London Development Agency (Lower Lea Valley, Olympic Legacy) Compulsory Purchase Order 2005 (the CPO). The CPO was confirmed by the Secretary of State on 18 December 2006, a General Vesting Declaration was made on 29 December 2006 and executed on 2 March 2007, with the property vesting in the LDA on 5 April 2007, which is the date of valuation for the purposes of this reference. The reference to the Lands Tribunal was made by the claimants on 26 March 2008.

2. Mr Neil King QC of counsel appeared for the claimants and called Mr Neal Matthews BSc MRICS of Strettons, Chartered Surveyors of Walthamstow E17, who gave expert valuation evidence. Mr Richard Honey of counsel appeared for the acquiring authority and valuation evidence was given by Mr Michael John Eckett BSc MRICS of Drivers Jonas LLP, Commercial Property Consultants of London EC4. I carried out an accompanied inspection of the area in which the subject property was located (it now forms part of the 2012 Olympic Park development site), together with the rental and yield comparables that had been referred to by both experts, on 12 August 2009.

Facts

3. The subject property, which had been acquired by the claimants in excess of 20 years ago, comprised a bus garage and yard that was located in a predominantly commercial area at the southern end of Waterden Road in Hackney Wick, London E9, close to Stratford Town centre, the A12 East Cross Route (M11 extension), Victoria Park, Lea Valley Park and the River Lea. It was also close to the former Hackney stadium, and adjacent to the former Hackney Dog Track. It comprised a 3.76 acre (1.52 ha) site that contained former warehouse/industrial buildings extending to some 48,201 sq ft (4,478 sq m) (including a separate single storey office building of 5,623 sq ft (522.4 sq m), together with ancillary yard and open storage areas extending to 67,384 sq ft (6,260 sq m). The principal buildings, which had historically been let as a number of separate units, were constructed in the 1940s/1950s of part reinforced concrete, part asbestos cement sheeting and part brickwork under corrugated asbestos clad pitched roofs incorporating translucent panels which acted as rooflights. The main depot building had an average eaves height of 18’4”, and the northern section had eaves of 16’5”.

4. In 1992 approximately 50% of the buildings were occupied by the predecessor to the East London Bus Group (ELBG) as a garage and workshops. On 2 April 2002, East London Bus and Coach Company Limited (ELBCC) entered into a new 10 year lease of the whole site at a rental of £405,000 pa. The lease required the building be kept in good and tenantable

repair and condition in accordance with, and subject to, an updated schedule of condition; the permitted user was as a bus depot with associated parking, service lane, chassis wash and car park, or any other use falling within use classes B1, B2 or B8 of the Town and Country Planning Act 1987. The lease also contained a Licence for Alterations permitting the demolition (without a requirement for reinstatement at term) of the 5,623 sq ft single storey building that ran along the southern boundary. It was subsequently demolished, its former footprint being utilised as additional yard area, and it was agreed that, for the purposes of the 2007 rent review (which was due on 2 April 2007, 3 days prior to the valuation date), it should be assumed that the building continued to exist, but should be excluded from any calculation of rental value on expiry of the lease. Although no evidence that specific planning consent had ever been obtained for the use of the subject property as a bus garage was available, it was agreed that as planning consent had been obtained in 2002 for various bus related facilities and no enforcement action had ever been taken, it was reasonable to assume that the use was permitted. It was also agreed that, in accordance with the adopted UDP, consent for alternative uses within classes B1 – B8 would be likely to be forthcoming.

5. At the valuation date, the reference land was operating at, or close to, capacity and ELBCC made use of the adjoining former dog track (which had been acquired by LDA in 2003 as part of its strategic regeneration programme) for parking of staff vehicles. The remaining buildings had been maintained in accordance with the lease, and the external yard areas had been resurfaced from their original concrete finish.

6. A basic loss payment of £75,000 and reinvestment costs of £67,088.50 under section 10A of the Land Compensation Act 1961 have been agreed. These, together with pre-reference costs, are to be added to the compensation determined under this reference, calculated in accordance with the provisions of Rule 2 of section 5 of that Act.

Issues

7. The issues remaining in dispute were:

1. The open market rental value of the buildings and yard at 5 April 2007
2. The capitalisation rate (yield) to be applied to that value
3. Pre-reference costs

8. The experts adopted the investment approach to valuation by capitalising the market rent. Whilst it was common ground that there were no direct comparables at the valuation date for determining either the rental value or the appropriate yield to apply, they helpfully produced tables setting out agreed details of various industrial units/bus garages/yards referred to, and areas (principally relating to the adjustments that should be made to them to reflect differences) where they remained in dispute. Adjustments related to differences in size, location, condition, tenure and date of transaction.

9. Similar tables were produced to inform the appropriate capitalisation rate, and were analysed on the basis of gross equivalent yields (GEA). Factors influencing the yield were agreed to be age, condition, covenant strength, term certain, location, lease structure and date of transaction. It was agreed that there was no "exact science" to the adjustments that were made and it was essentially a matter for the valuer's judgement informed by his own knowledge and expertise. Mr Eckett said it was not necessarily appropriate, as Mr Matthews had done, to take a mid point within a range of rent comparables, as a detailed analysis of those at either end of the range could well lead to a conclusion that the subject property's rent should be towards one or other end of it. However, it was acknowledged that, in terms of their ultimate conclusions as to value, there would be a range within which any figure would be acceptable, but in this case, that difference between the valuers' opinions fell well outside such a range.

10. Neither of the experts made additional adjustments to their analyses of comparables to take any "Olympic effect" into account. It was agreed that the precise implications of this could not be quantified in valuation terms, but the claimants said that it could have both positive and negative effects. It was the acquiring authority's case that, by looking at comparables over a wide geographical area, rather than just those within Stratford, and the immediate Olympic Park environs, the risk of contamination by this effect was less acute.

11. As to the rental that would have been applied at the review on 2 April 2007 (and thus the open market rental value at the valuation date), the claimants argued for a figure of £6.50 per sq ft (psf) for the buildings and £2.50 psf for the yard areas, whereas it was the acquiring authority's case that the figures should be £6.00 and £2.15 psf respectively. This produced a difference in rental value of approximately £50,000 pa. The yield rate argued for by the claimants was 5.8% and, for the acquiring authority, 7.1%. Thus the claimants' assessment of the value of the freehold interest, subject to the lease, was £8,275,000 and LDA's was £6,019,000. Following the hearing, and as the result of agreement over treatment of the demolished building, the claimants' valuation was revised to £8,190,000. The difference between the parties was therefore £2,171,000.

12. After summarising each parties' general approach, I consider the evidence and submissions, and set out my conclusions relating to the two principal areas in dispute, as discrete issues. The Tribunal's valuation follows, and I then deal with pre-reference costs.

Claimants' case

13. Mr Matthews is a chartered surveyor, and a director of Strettons, a multi-branch firm of chartered surveyors covering east London and parts of Essex and Hertfordshire. He has over 20 years experience in the valuation of residential and commercial property, and is Strettons' principal surveyor based at their Walthamstow office. His particular responsibilities extend to overseeing the regeneration and industrial agency divisions of the business, and since 2003 has been advising private and corporate landowners in connection with the at first proposed, and subsequently confirmed, decision to adopt Stratford as the principal venue for the 2012 Olympic Games.

14. He said that, at the valuation date, the market was still buoyant despite the fact that there had been two recent increases in interest rates. Those increases, he said, were an attempt to reduce the amount of money in the market and to ease inflationary pressures, and were not at the time indicative that a severe recession was about to commence. It was not until the spring of 2008 that there was any change that would have had an effect upon rental values or yields, that being the time at which the banks withdrew funding from the market. At the valuation date, the market was still awash with funds and banks were continuing to lend money "hand over fist". Mr Matthews said that he had agreed with Mr Eckett that typical purchasers for this type of investment were most likely to be individuals (like the claimants) or a small consortium, fund or property company. Whilst some of those purchasers would be relatively unsophisticated in terms of the regard they would have to published market commentaries, or the, as it was submitted, "niceties" of capitalisation rates, the fact was that there was no evidence of any major concerns in relation to the economy before August 2007.

15. The RICS UK Economic Brief of April 2007, which would have been published very soon after the valuation date, reported that the UK economy remained in good health, with better growth than had been predicted, and forecast that industrial rents would strengthen. These views were, he said, supported by the Drivers Jonas Investment Trends Industrial 2006, although he acknowledged that that report was dated June 2006. The King Sturge UK Industrial and Distribution Floorspace Today report from March 2007 confirmed that demand continued throughout 2006 and into the first part of 2007. The Drivers Jonas Investment trends survey for summer 2007 (published in August of that year) was the first report to highlight some hardening in the market, although demand for smaller industrial units remained robust, and London and the South East was expected to remain a key location for industrial performance "over the next few years". Mr Matthews said that his own firm's experience, through its regular auction sales, showed a more subdued residential market as the year went on, but results showed no decline in demand for small commercial lots. The market perception generally at the valuation date confirmed a market for industrial premises in the area that remained strong, and there was no indication at that time of any hardening of rents or lack of demand. Indeed, he said, Mr Eckett's reliance on the IPD indices for making adjustments for time, continued to show growth in the sector beyond the valuation date.

16. The considerable infrastructure works that had been carried out in this part of East London, all of which was well prior to the Olympic announcement, but may well have had a positive effect upon that decision, had significantly improved accessibility to Stratford. Those works included the Queen Elizabeth Bridge, A406 (North Circular) widening and the A12 (M11) extension. There was also the Hackney Wick regeneration, the new CTRL station at Stratford and the planned Stratford City development of 5 million sq ft offices and up to 4,000 residential units. Mr Matthews said that none of these improvements and proposals were Olympic related, and although there was undoubtedly some element of "Olympic effect" on the area generally, not all of it would have necessarily been positive (disruption to local businesses, for example), and it had been agreed with Mr Eckett that it was impossible to quantify.

17. Mr Matthews said that in order to establish the rental value of the subject property at the valuation date, it was first necessary to consider the figure to which the rent would have been

reviewed under the lease, only 3 days earlier. In his initial valuation, at £480,000 pa, he calculated the figures on the basis that it had to be assumed under the lease that the now demolished single storey building still existed at the review date. Although he had been under the impression that the landlord could demand reinstatement of the building at the end of the lease, and had accordingly valued the rent in perpetuity, he accepted during the hearing that there was no such obligation. The footprint formerly occupied by that building should, at term, therefore be valued as yard space rather than buildings, thus reducing the rental value by about £10,000 pa. In cross-examination he said that such a reduction would be marginal as a proportion of the overall rent, and he thought it unlikely that a prospective lessee (whether ELBCC or an assignee) would try to negotiate the rental downwards. However, in response to a question from the Tribunal, he accepted that his valuation should reflect the correct situation (that the demolished building would not attract any rent at lease renewal), and provided a revised valuation as follows:

Term and reversion rents April 2007 to April 2012		
Buildings: 48,201 sq ft @ £6.50 psf		£313,307
Yard: 67,384 sq ft @ £2.50 psf		£168,460
		£481,767 say £482,000 pa
Reversion to perpetuity from April 2012		
Buildings: 42,578 sq ft @ £6.50 psf		£276,757
Yard: 78,360 sq ft @ £2.50 psf		£195,900
		£472,657 say £472,500 pa
Term rent	£482,000	
YP for 5 yrs @ 5.8%	4.235	
		£2,041,270
Reversion rent	£472,500	
YP in perp @ 5% def'd 5 yrs	13.01	
		£6,147,225
		£8,188,495 **say £8,190,000**

18. Mr Matthews said that it was common ground that the property should be valued as a bus garage and ancillary yard/parking. The fact that the rent review clause included "any other use coming within use classes B1, B2 or B8" meant that transactions for a broad range of alternative uses could be taken into account for comparison purposes. He said he disagreed with Mr Eckett that costs of conversion to an alternative use within those parameters would be prohibitive. In the case of the subject property, the built footprint was smaller than would normally be expected as a percentage of site area, only 29% against a norm for modern developments of 40-45%, and the extra large yard would have been an attraction in the marketplace. It was appropriate, he said, to formulate the rental value by assessing the built area at one level, and all the additional open areas at another. As to the analysis of the comparables, Mr Matthews said he agreed with Mr Eckett's methodology of assuming 50% site cover or built space to yard area, with the balance of the yard area rentalised.

19. As to the rental value for the built space, the schedule of ten comparable properties that the valuers had agreed to be appropriate (to varying degrees) was updated following the hearing to reflect concessions and further areas of agreement. The list contained four bus garages: The Arriva Garage, Leeside Works, Tottenham (Arriva); First Bus Garage, Lea Interchange, Stratford (First Bus); The Parcelforce Site, Stephenson Street, West Ham (Parcelforce), to which ELBCC relocated, in part, from the subject property, and Edgware Bus Garage, Station Road Edgware (Edgware). The remaining six comparables were industrial units: Units 1-3 Wayside Industrial Estate, Barking (Wayside); Units 1-3 Alpine Way, Beckton (Alpine Way); Units 10, 11, 15 & 16 Gemini Business Park, Beckton (Gemini); Unit 4 Orient Way, Leyton (Orient); Old Ford Trading Estate, Maverton Road, E3 (Old Ford) and Unit 2/3 International Business Park, E15 (IBP). By his analysis, after applying adjustments, the overall range of rental values was from £5.37 psf (Old Ford – agreed) to £7.72 psf (Unit 2/3 IBP – his figure), an average of £6.55 psf. Looking at the four bus garages alone, which were agreed to be the most appropriate comparables, and allowing for his own adjustments, the average became £6.47 psf. Hence the £6.50 psf that he had adopted. Mr Matthews said that the industrial premises that were in the locality of the subject property were also good evidence in establishing the overall tone of rents in the area.

20. As regards the capitalisation rate, Mr Matthews said that whilst the methodology for determining the appropriate yield had been agreed in terms of the analysis of comparable transactions, there were particular additional issues in dispute relating to the subject property. These included whether adjustment was necessary to reflect the complex nature of ELBCC's company structure, and what allowance, if any, should be made for the fact that Stagecoach had taken money out of the company prior to its sale. The eight properties in single tenanted occupation that the experts considered as comparables produced a range of gross equivalent yields of between 5.62% and 6.94%, and Mr Matthews said he had taken a "mid range" figure of 5.8%. Regard should also be had, he said, to the three multi-let estates that had been considered by himself and Mr Eckett. Whilst they were not directly comparable (although the subject property had been multi-let in the past), they were indicative of activity and demand from the investment market generally. Adjustments needed to be made to reflect the active management potential for such properties and the type of purchaser who would be interested. The range of yields that these investments produced was between 5.8% and 8.95%.

Acquiring Authority's case

21. Mr Eckett is a chartered surveyor and a partner in the Compulsory Purchase Team at Drivers Jonas, and said that, since joining them from G L Hearn in 2006, had developed a specialism in advising on bus garages, having acted for both Transport for London (TfL) and the LDA in the valuation, acquisition and letting of this type of property, especially in East London. He said that he had been involved with the London 2012 Olympic Games and Legacy, and had dealt with numerous compulsory acquisitions for the Olympic Park since early 2006.

22. He said that he had considered two categories of comparables: bus garages and broadly comparable industrial properties. The former required less adjustment but, after adjustment,

the ranges of rents in both categories were found to be similar, thus corroborating his views. The 3 bus garage lettings and 1 rent review he considered produced rents, after adjustment, of between £5.36 and £5.99 per sq ft. The industrial units produced figures between £5.08 and £6.10 per sq ft. He said he adopted the highest of the bus garage figures for the subject property, and rounded it to £6.00. As to the yard area, his research indicated a range of £2.09 to £2.22 psf, and he took a mid-point of £2.15. On the basis of the areas of the property, including the buildings that were subsequently demolished, this produced a rental value of £434,000. Adjusting the areas on the agreed basis to allow for the reduced buildings area, and increased yard size at lease renewal gave £424,500.

23. Factors affecting the appropriate yield rate to be applied would include a level of doubt in a prospective investor's mind when considering whether or not ELBCC would vacate at the end of the lease, and the potential risk, therefore, of a significant void period. He would also have in mind the overall poor condition of the buildings, the inefficient and inflexible layout and the fact that much of the plant and machinery was nearing the end of its useful life. The site was also being operated at or close to capacity, and the need for the staff to park their cars on an adjacent site (the availability of which in anything other than the short term was in question), or the roadside would mean there was a fair chance the occupier might well try to find alternative premises at term. With no direct comparables readily available, Mr Eckett said he had to make significant, subjective, adjustments from the evidence he did have, and came to the conclusion that, taking all these points into account, an appropriate yield would be 7.1%. In his view, Mr Matthews' additional reliance upon multi-let estates was misplaced as they formed a different asset class.

24. His valuation was thus:

Term and reversion rents April 2007 to April 2012		
Buildings: 48,201 sq ft @ £6.00 psf		£289,206
Yard: 67,384 sq ft @ £2.15 psf		£144,876
		£434,082 say £434,000 pa
Reversion to perpetuity from April 2012		
Buildings: 42,578 sq ft @ £6.00 psf		£255,468
Yard: 78,360 sq ft @ £2.15 psf		£169,055
		£424,523 say £424,500 pa
Term rent	£434,000	
YP for 5 yrs @ 7.1%	4.09	
		£1,775,060
Reversion rent	£424,500	
YP in perp @ 7.1%	14.08	
	£5,976,960	
Deferred 5 years	0.71	
		£4,246,682
		£6,018,702 **say £6,019,000**

Rental value

25. Looking at the bus garages, although Mr Matthews had initially contended that Parcelforce and First Bus transactions were 'soft', in that they were not true arms length transactions, he accepted in cross-examination that they were and that no adjustments for that were necessary. However, he remained concerned that they had not been actively marketed as such, having been acquired by the LDA to relocate dispossessed occupiers, and the transactions post-dated the valuation date. By that time (7 & 9 months respectively), it was accepted that the market had begun to harden. A 10% adjustment for location had been made to Arriva, as it was significantly further from central London, although it was accepted in cross-examination that no such adjustment was in fact appropriate, and he removed it from his final calculations. The only difference that remained between him and Mr Eckett on this property related to the adjustment for condition. Mr Matthews reduced the rent by 5% whereas Mr Eckett reduced it by 10%. He said (and Mr Eckett agreed in cross-examination) that there was no exact science in making adjustments – it was essentially a matter of judgment informed by one's experience and knowledge of the characteristics of the East London property market. It was submitted that Mr Matthews had the greatest "hands-on" experience of that market, and that his views should be preferred. Mr Matthews said that "a bus garage is a bus garage" and the question of condition was less critical than for, say, a modern office building. As long as it was serviceable and fit for purpose the difference in rental value between a building in good condition and one that was acknowledged to be poor would not be significant, hence his 5%.

26. Mr Eckett did not agree. It had been acknowledged in the statement of agreed facts that Arriva was a more modern building that had been let in good condition. It was also agreed that the subject property was, overall, in poor condition. He did not agree with Mr Matthews' argument, and felt that a 10% deduction to reflect condition was warranted. The adjusted rent on this comparable, by his reckoning, came to £5.98 psf, whereas with the smaller discount for condition, Mr Matthews analysis was £6.95 psf.

27. Whilst the analysis of First Bus was agreed (£5.79 psf), the same arguments were raised in connection with the condition of Edgware**.** That was a very large, purpose built bus garage with good access and was shared by two operating companies. Again, Mr Matthews deducted 5% for condition and Mr Eckett deducted 10%. On this property, both valuers had, due to disagreement over the interpretation of the rental evidence from the agent involved with the rent review, and in their rental analysis of the yard areas, produced a range of values. The differences between them, taking account the percentages deducted to reflect condition, were in the region of 30 – 40p per sq ft. It was submitted by the acquiring authority that less overall weight should be given to Edgware due to its location, size, dual occupancy and the fact that it was a rent review that was being analysed, not a letting. Parcelforce was a new letting of a purpose built bus parking area with newly erected temporary maintenance and repair buildings. The analysis of that transaction was agreed at £5.99 psf.

28. It is essentially the valuers' opinions on the allowances to be made for condition that represent the difference between them on the bus garage comparables. Whatever conclusion I reach on that issue alone must, as is the case with any adjustments to comparables, be

subjective and a matter of professional judgment, based upon the evidence before me rather than, as is the case with the experts, their particular professional knowledge and experience from within the area in which they operate. I am inclined to agree with Mr Matthews' contention that condition is probably a little less important when looking at a bus garage (in terms of the rent which a prospective occupier would pay, rather than in considering its investment value where condition will, in my view, be more important). However, it seems to me that, as argued by the acquiring authority, it would not only be the physical condition that would temper a tenant's bid, but also the acknowledged inconvenient layout of large areas of the building which are more akin to warehouse use than as a bus garage. It was agreed that there were areas of the building, particularly those behind the raised loading bays, that could not effectively be used by ELBCC. Furthermore, the lack of on-site staff parking would, I think, also serve to mark the rental value down in comparison with all the other bus garage comparables. I really cannot see the rental value of the subject property, with all its foibles, being more than, for instance, that of Parcelforce, which, even allowing for the "temporary" nature of the buildings was clearly infinitely better than the subject property. Likewise, Edgware, which was purpose built and on a very large site that could arguably not be more convenient, for its purposes, in terms of location and overall layout. The rent there, settled on review at (depending on which analysis is preferred) between £6.12 and £6.79 psf, suggests to me that Mr Matthews' £6.50 is somewhat optimistic.

29. In the light of the evidence, I am satisfied that, on the basis only of the bus garage comparables, a rent of £6.00 psf was the appropriate figure at the review (and valuation) date. It was submitted by the acquiring authority that the four bus garage comparables alone should be sufficient to determine the appropriate rental value for the subject property. I viewed the industrial comparables with the experts and agree with LDA that, particularly with the rather greater adjustments that are required (and have been made) they add little of major assistance in this determination, other than to offer general support to the level of rents applied to the bus garages. The major area of dispute between the experts on the industrial units related to condition, and I found it rather confusing that Mr Matthews had chosen to apply a maximum 10% cap under that head, whatever the property, for the fact that condition was of less importance for bus garage use, and make any further adjustment a matter of "valuer's judgment". I accept the acquiring authority's submission that Mr Matthews' approach had a constraining effect, that it was unjustified and if it had not been used, the differences between his views on condition of the industrial units, and those of Mr Eckett would most likely have been considerably less.

30. A useful example of the effect of the experts' different views on condition is Units 1 – 3 Alpine Way, Beckton. They are modern, purpose built and recently refurbished premises and are clearly in significantly better condition than the subject property. Mr Matthews made an adjustment of only -5%, whereas Mr Eckett used -10%. Thus the adjusted rent became £6.79 psf by Mr Matthews' reckoning, and £6.10 by Mr Eckett's. Similarly, Gemini at Beckton are new-build units where Mr Matthews made a 10% reduction, and Mr Beckett made 20% on the question of condition. The effects on rental value of that greater reduction was to reduce the claimants' £6.74 to £5.99. I entirely accept Mr Eckett's greater adjustments for condition as it is clear that the differences between the properties (in terms of condition) were significantly greater than Mr Matthews was allowing.

31. It was also agreed that the subject property should be valued on the basis of its use as a bus garage, and although I am satisfied that planning consent for a broad range of uses within the defined planning criteria would have easily been forthcoming, quite considerable expenditure would be needed to make it suitable for such alternative uses. This adds a further complication to the exercise and, in my view, supports a rather narrower comparison of comparables than the total provided in the experts voluminous reports.

32. Turning now to the yard area, the experts agreed a schedule of 6 comparables: the ancillary yard areas at the Arriva, First Bus and Parcelforce bus garages, together with open storage yards at the former Carlsberg Tetley site in Silvertown, and two transactions at Phoenix Wharf, N18 (in September 2005 and August 2008). Whilst Mr Matthews was of the view that lettings of pure storage yards were good comparables, he accepted in cross-examination that open storage land was a different proposition to ancillary yard areas. Mr Eckett was of the view that they were clearly very different markets, and the three bus garage analyses were sufficient to establish an appropriate level of rental value. Arriva was agreed to be £2.16 psf (despite Mr Matthews' revised table, submitted after the hearing, still including his adjustment for location that he had agreed should not be made), First Bus £2.10 psf and, subject to the disagreement on allowance for condition, Parcelforce was (on Mr Eckett's figures) £2.17 psf. If Mr Matthews reduced condition allowance was taken, the figure would be £2.29 psf for that property. He said that the fact Parcelforce had a brand new fully tarmacadamed and marked out parking area would not make a significant difference. The subject property's older but refurbished yard, whilst defective in parts and prone to puddling, was equally useable. Whilst, in this instance, I agree with Mr Matthews that a 5% deduction, rather than 10% is appropriate for the difference in quality of yard areas, that would only increase the average of the three rents by 4p per sq ft (from £2.14 to £2.18).

33. It was the letting of storage land at Phoenix Wharf in September 2008, at £2.89 psf (adjusted) that raised the mid-point of Mr Matthews' adjusted figures to almost £2.50 psf. However, I note that he said in his main report that that transaction was "pertinent to this case, but not directly relevant." His adjusted figures for both the Phoenix Wharf lettings also included a 10% upward adjustment for location, but it was Mr Eckett's opinion that no such adjustment was necessary as both the subject property and the storage yard comparables were in similar industrial areas. In any event, he stressed that with storage land (without buildings) being at a premium, and with planning consent hard to obtain, it was likely that the level of rents would not be compatible with what might apply to ancillary yard areas.

34. I agree with Mr Eckett's views, and am satisfied that the comparable evidence from the three bus garages clearly indicates a pattern of rental values that should be applied to the subject property. However, although it makes precious little difference to the overall rental value, allowing for the reduced level of discount on Parcelforce, I determine the rental value of the ancillary yard area at £2.20 psf.

Capitalisation rate

35. This is the factor that has the most significant impact upon the valuation of the subject property. The experts produced, in the statement of agreed facts and issues, a table setting out details of 8 transactions relating to single tenanted buildings and 3 multi-let estates. It was agreed that the sale of Units B, C & D, East Cross Centre, Stratford (East Cross) in April 2007 at a GEA of 6.52%, a term certain of 14 years and a "very strong" covenant strength formed the most appropriate base comparable. That was a 145,000 sq ft factory building of similar age to the subject property, but with accommodation over 5 and 6 floors. It had been let to Moss Bros Plc on a 20 year lease from 2002 at £579,637 pax. Mr Matthews said that he had pitched the proposed yield for the subject property at a lower level to reflect the fact that single storey units were easier to let, and East Cross had a very small yard area, poor loading and an inflexible layout. The difference would have been more, were it not for the off-setting upward adjustment needed to reflect the fact that Moss Bros had a very strong covenant strength, as it was agreed, after considerable debate at the hearing relating to the company structure and the cash movements that had occurred, that the covenant strength of ELBCC could only be termed "strong". His original view, which contributed to his proposed yield, had been that the covenant strength was "excellent".

36. Mr Matthews produced, with his rebuttal report, a further table setting out in detail the precise adjustments that he had made from each of the comparables to inform his opinion that an appropriate yield for the subject property was 5.8%. The adjustments were for condition, covenant strength, location and lot size. They produced a range from 5.52% to 6.44%, of which the median was 5.98%. He said that his figure of 5.8% reflected the strong growth in the tenant's business sector and the likelihood of their renewing. There was also the potential to actively manage the property on lease expiry (if the tenants did not renew), and increase rental income. In cross-examination he acknowledged that in respect of Hard Case, Thurrock, he had only made a +0.2% adjustment for condition, whereas that was a huge, new, high specification warehouse with good eaves heights throughout, and excellent loading facilities. It was fully let to Co-operative Group (CWS) for a term of 20 years with 5 year reviews. He had also made no adjustment for term certain (which was 9 years), and indeed had made no adjustments for that aspect on any of the comparables. In that regard, he said that there were many aspects that had to be taken into consideration, and that "the line had to be drawn somewhere". However, he said that he had, in coming to his final conclusion, taken all such matters into account. Similarly, when questioned on his adjustments on Prologis, Barking, 34 Marshgate Lane, Stratford and Lea Mill, Stratford, he said that he had taken a whole range of factors and criteria into account, that nothing was "black and white", and that he had taken an overall view. Mr Matthews had also made adjustments for location and, in respect of the Whiteleaf Road Bus Garage in Hemel Hempstead, he had deducted 0.5% to reflect the fact that it was located in the home counties. Nevertheless, he did accept that it was an equally good location for such a user, being close to its bus routes, but said that its potential for alternative uses was also wrapped up in that figure. As to the reliance on the multi-let transactions, Mr Matthews accepted that these were, to a large extent, a different asset class, and should not be given the same weight as the single let comparables, although he did think that they were indicative of activity and demand in the investment market in the relevant area.

37. Mr Matthews said that in his view, there would have been very good prospects of ELBCC renewing their lease at term and this would, of course, be reflected in the yield. There was a scarcity of suitable sites for this type of occupation, and with the Mayor's Office and TfL having been heavily promoting increases in bus use for many years (and likewise substantially increasing bus numbers), he saw no reason why the company's route franchises should not be renewed, thus confirming their continued need for the site. Even if the franchises were not renewed, for whatever reason, it was likely that other operators would come along, and they would similarly need a strategically located bus garage to operate from. Mr Matthews accepted in cross-examination and in response to a question from the Tribunal that if the routes were to be transferred to another operator, they may be able to make use of existing garaging facilities, and he also accepted the acquiring authority's evidence that TfL's practice was not, as he had thought, to take over bus operations and run them from existing sites.

38. He also accepted that the term certain for the subject property was less than all of the single-let comparables referred to in the table, other than Pro-Logis, which was only 2 years, but there was a rental guarantee there. However, it was his view that if the subject property was to be offered to the market, the owner would first take steps to negotiate a new, extended lease with the occupier, and as he had received confirmation from ELBCC that, as at 2007, they had been expecting to want to renew at term, Mr Matthews felt there was a strong chance that the term certain could have been extended before the property was sold. Even if the lease was not renewed, he was of the view that the property would re-let "within 3 to 6 months, or perhaps a little longer."

39. As to the market, it was Mr Matthews' view that, at the valuation date, it was as strong as ever, and whilst there had been two interest rate rises and there were signs that other markets were slowing down, he insisted that demand for industrials of this type had not by then been affected in any way. He accepted that it started to harden to a significant degree during 2007, but said that the market had not been affected before the summer at the earliest. In response to a question from the Tribunal, he said that, in reality, prospective investors consider particular property types within a range of expected yields, apply the sort of specific criteria he had referred to in his evidence, and then "form a view." In this case it was Mr Matthews' view that, taking all the criteria into account, the correct yield was at the bottom of the range.

40. Mr Eckett said that "the investment market was not an exact science"; it was intuitive, and a prospective purchaser would certainly not undertake such detailed mathematical adjustments as had been carried out by Mr Matthews. He said that the purchaser would look first at term certain, followed by covenant strength, lease structure, the age and condition of the property and then he would also consider how quickly it could be expected to re-let if the occupier defaulted or chose not to renew. The shorter the term certain, he said (and in this case it was only 5 years), the further out the yield rate would have to be moved, especially if there was a risk that there would be difficulty in re-letting. He said that location was of much less significance and in his search for suitable comparables he had looked throughout Greater London, and had also included one in the home counties (Hemel Hempstead) because it was a bus garage, and a close match to the subject property in many respects. He had also not considered lot size to be a specific factor. He did not agree with Mr Matthews that the multi-

let transactions that he had referred to were appropriate to use as comparables. In respect of the way he had analysed the comparables, Mr Eckett said that he had made “outward or inward” adjustments to the actual gross yield achieved to reflect the differences between those and the subject property, but accepted in cross-examination that this was not particularly transparent. However, in all cases, he said he had taken a step back and thought about what, in the real world, an investor would do. For instance, in respect of the Hard Case unit at Thurrock, he had compared the building (in terms of age, size, condition and suitability for purpose), its location on a secure site, its plot ratio (50%), lease details, covenant strength and term certain and on the strength of that information had concluded that it would have been perceived by investors to be a far more attractive opportunity and that “in adjusting the yield I made significant outward adjustments for covenant strength, condition and term certain.” Although it was not possible to establish from his methodology precisely what those individual adjustments were in terms of percentage points, he said that is precisely the way the market goes about it.

41. In his view, whilst it was accepted that the investment market was still performing well in April 2007, it was a fact that there were fewer buyers in the market than there had been in December 2006, and those that were tended to be the large funds (Prudential, Axa etc) who were not the type of buyer for the subject property. The market was also much stronger for well let, modern, purpose built properties, and was considerably weaker for secondary lots like this one. Having said that, he accepted in cross-examination that the market was still “robust” and that the market commentaries that Mr Matthews had referred to were indicating no particular cause for concern at the relevant date.

42. Mr Eckett said that there were real risks that the tenants would not renew in 2012 due to the fact that the site was being operated to full capacity, and the company was struggling to maintain its 170 buses that were located there. The facility for staff parking on the adjacent former dog-track was short term at best, and it was likely LDA would be seeking to redevelop it in the near future. These risks were a major factor in determining the yield, and with the predicted continuation of growth in the bus market, the fact that the subject property was in poor condition and inflexible in its usability and the need to provide good facilities to attract the right staff, there were serious concerns as to whether ELBCC would be seeking an alternative site or premises by 2012. If they did vacate, and even if a new occupant could be found within, say, 6 months, allowance would also need to be made for the rent free period that they would surely demand and, if a change of use was required, for the time that it would take to obtain planning consent. In his view, these concerns would be reflected in the yield rather than undertaking a detailed valuation predicting void period and likely capital expenditure required to make the now vacant property attractive to the market.

43. Taking all factors into account, and using his own professional knowledge and experience, to analyse and interpret the information relating to each of the relevant comparables, Mr Eckett said that he believed an investor would pay a price that reflected a yield of between 7.0% and 7.4%. Applying a capitalisation rate at the “sharper” end of this range, he concluded the appropriate yield to be 7.1%.

Conclusions – yield

44. Firstly, I agree that the multi-let comparables are not appropriate, and have not, therefore, considered them. Regarding Mr Matthews' evidence on yield, I note that although he has been prepared to make a minor adjustment to his valuation following the hearing to reflect the situation regarding the treatment, in terms of rental value, of the demolished part of the building, he had not deemed it necessary to reconsider his defined capitalisation rate to take account of the fact that he had accepted the lessee's covenant strength to be strong rather than excellent. Furthermore, he accepted that he had made no adjustments for term certain which, in my view, and which he admitted, was an essential consideration. He acknowledged that if undertaking the exercise again he would have taken that factor into account but, again, he did not revise his valuation to reflect it. I accept Mr Eckett's suggestion that, for those reasons, Mr Matthews' conclusions must be somewhat suspect. As to the adjustments Mr Matthews made for condition, despite, as he suggested, that aspect probably being slightly less important in this case, they do not appear to me to be sufficient.

45. Turning to the question of whether ELBCC could have been expected to renew the lease at term, whilst I think that there was a reasonable likelihood, I do not think that Mr Matthews has taken sufficient account of the risks that they may not. This is particularly borne out by his suggested yield which lies below the median of his possible range. The fact that the occupier was operating to capacity, had no long-term guarantees as the car parking arrangements, and were occupying buildings that were in no small part unsuitable for their needs suggests to me that their continued occupation was by no means certain.

46. As to the state of the economy at the valuation date, I agree with the acquiring authority's submissions that whilst there had been no reported slow down in the industrial market, the changing circumstances in the rest of the marketplace and the two recent interest rate rises should not be ignored. This is especially so when considering the type of purchaser. As Mr Eckett said, the large institutions (who would not have been in the market for this type of investment) are guided to a great extent by historic and long-term trends, whereas smaller individual or family type purchasers or consortia tend to be somewhat less sophisticated. The economic situation would, I think, have acted to harden investors' perceptions, thus engendering some caution, especially as it is a fact that much of the purchase price would be funded by borrowings. With April 2007 being right on the cusp of the market turn, and with interest rates already moving upwards, I do think that some, albeit small, further correction needs to be made to reflect those conditions.

47. In my judgment all of the factors set out in the above paragraphs point to the need for outward movements to Mr Matthews' suggested yield. As to Mr Eckett's evidence, whilst I agree that his approach is less obviously transparent in terms of individual adjustments, I think that his very detailed 'plus a percentage point here, and less a percentage point there' analysis has served to expose the weakness in his own methodology. With the concessions he has made, and acknowledgement that some factors were not taken into account in forming his view, I am rather more comfortable with Mr Eckett's arguments and conclusions. It strikes me that he has taken a more realistic approach in seemingly "standing back" and comparing

achieved yield rates on like for like comparables and then making inward or outward adjustments to reflect particular differences. He has put term certain high on his list of adjustment factors, and I think he was right to do so.

48. It was submitted that his yield, at 7.1%, was clearly more appropriate when considering the comparables. For instance Lea Mill achieved 6.94% in April 2007. It had the same covenant strength, a longer term certain of over 12 years, and was said to be in better condition than the subject property. However, it did not seem to me to offer the potential of the subject property. The yield on East Cross, acknowledged to be the best base comparable, was 6.52%. That had a stronger covenant and a term certain of 14 years. But, in my view, there is a minus side to that comparable. It was a multi-storey building and, whilst that configuration may well have suited the occupier (Moss Bros), it would be a considerable handicap on re-letting, albeit that term was a long way off.

49. I note that Gascoigne Road, Barking (5.82% with a 10 year term certain), Western Avenue, Thurrock (6.12 to 6.64% with 15 years term certain) and Prologis (6.6% with 2 years term certain) are all very modern purpose built units. Along with Hard Case, Thurrock they must all be somewhat more attractive to the market than the subject property.

50. Having considered all the evidence, and taking into particular account the 5 year term certain on the subject property and the risks relating to renewal, together with its age, condition and layout, it is clear to me that 5.8% is not a realistic expectation. On the other hand, taking the range of actual yields achieved on the comparable properties (5.82% to 6.94%), I do think that Mr Eckett's 7.1% is somewhat harsh. Doing the best that I can, and particularly bearing in mind East Cross, I conclude that the appropriate capitalisation rate to be applied is 6.8%.

51. The Tribunal's valuation is, therefore:

Term and reversion rents April 2007 to April 2012		
Buildings: 48,201 sq ft @ £6.00 psf		£289,206
Yard: 67,384 sq ft @ £2.20 psf		£148,244
		£437,450 say £437,500 pa
Reversion to perpetuity from April 2012		
Buildings: 42,578 sq ft @ £6.00 psf		£255,468
Yard: 78,360 sq ft @ £2.20 psf		£172,392
		£427,860 say £428,000 pa
Term rent	£437,500	
YP for 5 yrs @ 6.8%	3.901	
		£1,706,687
Reversion rent	£428,000	
YP in perp @ 6.8% def'd 5 yrs	10.603	
		£4,538,084
		£6,244,771 **say £6,250,000**

52. I determine that the compensation to be paid to the claimants by London Development Agency under section 5, rule (2) of the Land Compensation Act 1961 shall be £6,250,000.

Pre-reference costs

53. I was asked to consider submissions relating to the costs incurred by the claimants prior to the submission of the notice of reference, in connection with the professional services of Mr Matthews. The claimant said that Mr Matthews's invoice of 4 June 2009 in the sum of £18,252.89 inclusive of VAT was reasonable and should be paid. The acquiring authority said that the hourly rate charged by Mr Matthews from 14 May 2007 at £240 plus VAT was unreasonably high and should not be recoverable. Reference was made to his formal letter before claim dated 18 March 2008 which stated that he was charging £200 per hour plus disbursements and VAT. With the hourly rate of £175 prior to 14 May 2007 agreed, the acquiring authority said that the revised invoice should be £14,168.87.

54. I agree with the acquiring authority's submissions, and determine that the claimants should also receive £14, 168.87 in pre-reference costs.

55. The total compensation is, therefore:

Value of property	£6,250,000
Basic Loss Payment	£ 75,000
Reinvestment costs	£ 67,088.50
Pre-reference costs	£ 14,168.87
Total	£6,406,257.30

56. This decision determines the substantive issues in this reference and will become final when the question of costs is decided. The parties are now invited to make written submissions on costs.

DATED 20 November 2009

P R Francis FRICS