UPPER TRIBUNAL (LANDS CHAMBER)

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LT Case Number: ACQ/430/2007

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – Green Belt land – conservation area – hope value – comparables – price indices – claimant's own time – surveyor's fees – VAT – compensation determined at £102,000

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**WEYBRIDGE MANAGEMENT LIMITED**	**Claimant**
	and	
	SPELTHORNE BOROUGH COUNCIL	**Acquiring Authority**

Re: Land at Orchard Meadow
Thames Street
Sunbury on Thames
Surrey

Before: A J Trott FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 12-13 March 2009

Guy Williams, instructed by direct access by Michael Rogers, Commercial Property Advisers of Reigate, for the claimant
Meyric Lewis, instructed by Spelthorne Borough Council Legal Services, for the acquiring authority

The following cases are referred to in this decision:

D B Thomas v GLC [1982] 1 EGLR 197
IRC v Gray [1994] STC 360
Ryde International Plc v London Regional Transport [2004] EWCA Civ 232
IRC v Clay and Buchanan [1914] 1 KB 339
Transport for London v Spirerose (in administration) [2008] EWCA Civ 1230

The following cases were referred to in argument:

Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands [1947] AC 565
London County Council v Tobin [1959] 1 WLR 354
Harvey v Crawley Development Corporation [1957] 1 QB 485
Prasad v Wolverhampton Borough Council [1983] 2 WLR 946
Waters v Welsh Development Agency [2004] 2 EGLR 103

DECISION

Introduction

1. This is a reference by the claimant, Weybridge Management Limited, to determine the amount of compensation payable by the acquiring authority, Spelthorne Borough Council, following the compulsory purchase of 3.65 acres of land at Orchard Meadow, Thames Street, Sunbury on Thames, Surrey (the reference land).

2. The acquiring authority acquired the reference land under the Borough of Spelthorne (Orchard Meadow, Sunbury on Thames) Compulsory Purchase Order No.1 1999, the purpose of which was to enhance the lower Sunbury Conservation Area by landscaping and laying out an open space to perform the functions of a village green. A general vesting declaration was made on 18 March 2001 and the acquiring authority entered onto and took possession of the reference land on 3 July 2001, which is the valuation date.

3. The claimant was represented by Mr Guy Williams of counsel who called Michael David Garson as a witness of fact and Nigel Amos BSc, MRICS, a salaried partner in the firm of Michael Rogers, as an expert valuation witness.

4. The acquiring authority was represented by Mr Meyric Lewis of counsel who called Richard Clay as a witness of fact, Dion Anthony Scherer FRICS, a director of Orchard and Shipman Professional Limited (trading as Campsie), as an expert valuation witness and John Brooks BSc, Dip TP, DMS, MRTPI, MCMI, Deputy Head of Planning and Housing Strategy at Spelthorne Borough Council, as an expert planning witness.

5. With the agreement of the parties I made an unaccompanied inspection of the reference land and relevant comparables following the hearing.

Facts

6. The reference land, which measures 3.65 acres, has a frontage of approximately 260 ft to the north of Thames Street in Sunbury on Thames, a short distance to the west of its junction with The Avenue. To the east of the site are the rear of the properties in The Avenue, to the north east is a council owned car park, to the north is Sunbury Park (public open space) and to the north west is a wall garden to which the public also has access. To the west are the properties and gardens known as Orchard House and Pantiles Court. Facing the reference land along the south of Thames Street are mainly residential properties to the rear of which lies the River Thames.

7. At the valuation date the reference land was an open, grass meadow with an area of trees and shrubs to the rear of Orchard House and Pantiles Court. It formed part of the Metropolitan Green Belt and was within the Lower Sunbury Conservation Area.

The case for the claimant

8. The claimant sought compensation in the sum of £182,500 for the open market value of the reference land. In addition it sought payment for the time spent by Mr Garson in dealing with the compulsory purchase of the reference land and the reference to this Tribunal. Such payment was estimated on the basis of an hourly rate charge of £200 per hour excluding VAT. Mr Garson estimated that he had spent 80 hours on behalf of the claimant subsequent to the confirmation of the CPO, ie £16,000 plus VAT. Surveyor's fees were also claimed. As at 28 July 2008 these were said to be £15,125 excluding VAT but including disbursements.

9. The claimant purchased the reference land at a public auction on 2 February 1998 for £82,000. Mr Garson explained that the claimant was a nominee company of which he was a director and that only his family had any beneficial interest in the company. He funded the purchase from his own monies and from family loans. He said that bidding at the auction had started at around £50,000 and that the acquiring authority were bidders until the price reached around £67,000. From there until around £79,000 there were at least two other bidders apart from the claimant and thereafter just one until the claimant made its successful bid.

10. Mr Garson explained that he was well acquainted with the site. He is a solicitor and in 1998 his practice, Philip Hodges and Co, Solicitors and Estate Agents, occupied 7 The Avenue, a property that overlooked the reference land. He had carried out a Commons Registration search before the auction and had been aware that the reference land was in the Green Belt. He had bought it for use as recreational amenity land for his family and friends and as a long-term investment with the possibility of it being "redesignated for a number of feasible alternative usages". However at the valuation date he said that he had no aspiration or intention to develop the reference land but thought "over time my aspirations might have changed". He considered that there was always the potential to develop at some (unspecified) future date when local and/or Government planning policy changed since it was "a prime piece of land for development". Mr Garson thought that the reference land was of interest to other local landowners and immediately after the auction he had been approached by two parties wanting to buy it. Later in 1998 Mr Griffiths of 24 Thames Street had offered to buy the property for £100,000.

11. The precise area of the reference land was not important to Mr Garson. He knew what he was buying and the fact that the original sales particulars had overstated the area did not matter; he had not based his bid upon a figure per unit of area.

12. Mr Amos took the price of £82,000 paid by the claimant at auction as the starting point for his valuation. He adjusted this to the valuation date by "building up a picture" using three sources of evidence; comparables, discernable trends in values and the history of transactions

13. Mr Amos said that the reference land had hope value for development both at the time the claimant purchased it in 1998 and at the valuation date. In assessing such hope value he had regard to the location of the property in a high value urban area close to existing development, its relatively small size, its affordability, current planning policy and a timescale for the release of development potential of at least 10 years and perhaps 15 to 20 years. He also felt that the site would be of interest both to local persons and to national house building companies.

14. He therefore began his analysis by considering the sale of sites in the Green Belt that had no planning permission for development but nevertheless had hope value. He relied on two of these. Firstly, a sale of 3.5 acres of land at Laleham Road, Staines in 1999/2000 for £150,000 or £42,587 per acre and, secondly, the sale of 15 acres of land at Broadmead Road, Old Woking, Surrey in small freehold parcels of 0.2 to 0.5 acres each. The sale of these parcels took place in 2001/02 and were said to be "for speculative purposes". Mr Amos acknowledged that he did not have details of the sale prices actually achieved but he analysed the asking prices to show £100,000 per acre.

15. He then reviewed and rejected five comparables put forward by the acquiring authority. Two of these, at Chobham and East Clarendon, were dismissed for lack of any details. The remaining three sites were at Wellington Meadows, East Horsley; land next to the Kingston Bypass at Chessington and land adjacent to Purley Recreational Ground near Reading. The site at Wellington Meadows was sold in October 2002 for £72,000 (£14,035 per acre). Mr Amos described it as a pony paddock that was located in a predominantly rural area and without hope value for development. The site at Kingston bypass was a former spoil heap located by a slip road which required expenditure to level and fence. It too had no hope value and was sold (at an unknown date) for £5,000 (£4,629 per acre). Finally, the land at Purley was purchased by Purley Parish Council in April 1998 for use as a children's football pitch, car park and burial ground. The price was £18,000 (£10,000 per acre). Mr Amos said that it did not have hope value due to its lack of access. Mr Amos also rejected Mr Scherer's evidence of three sales of Green Belt plots at auction in February 2009. He said that each site was completely different in character to the reference land, had no hope value and was in purely agricultural use.

16. Mr Amos subjected the comparables at Laleham Road and, despite his criticism of them, Wellington Meadows and Purley to further analysis. He compared them with the reference land by considering six variables and making appropriate adjustments. These variables were the date of valuation, the immediacy of development, location, physical characteristics, size and temporary alternative use potential. In each case the adjustments led to a net increase in the value of the comparables. Thus the value of Laleham Road was increased by 60% to £68,571 per acre, Wellington Meadows by 65% to £23,158 per acre and Purley by 130% to

17. In addition to his main comparables Mr Amos also referred to a further 12 sites in the Green Belt that were being marketed in February 2009. The asking prices ranged from £6,300 to £600,000 per acre.

18. Mr Amos thought it was conceivable that the reference land could be divided into plots in a similar way to the site at Broadmead Road, the value of which he analysed at £100,000 per acre. He considered that there would be interest from both local and national investors in owning a "garden size plot" at the reference land and he estimated that it could be divided into 35 plots and sold for £10,000 each, giving a gross total of £350,000. From this he deducted marketing and legal costs and an allowance for profit to leave a site value of £175,000. He said that this underpinned his estimate of the land value at £50,000 per acre based upon the transaction evidence. He also provided details of a further six sites which had been divided into plots with prices ranging from £8,200 to £40,000 (although only two of these plots had been sold). These transactions were used to demonstrate that it was market practice to create such plots.

19. The last piece of comparable evidence relied upon by Mr Amos was of the sale of five sites with residential planning permission in Lower Sunbury, Lower Feltham, Ashford, Addlestone and Horsham. The sites ranged in size from 0.23 acres (Ashford) to 0.9 acres (Horsham and Lower Sunbury) and in value from £740,000 per acre (Ashford) to £2.94m per acre (Horsham). Mr Amos said that whilst these sites were not directly comparable to the reference land they illustrated the potential uplift in value that could be achieved in this area if planning permission was granted. That in turn would be reflected in the hope value of the reference land.

20. Mr Amos supported his evidence of transactions by reference to the movement in property indices between the date of the auction in February 1998 and the valuation date. He used two indices, the Land Registry House Price Index and the Nationwide House Price Index. The former showed an increased in value for Surrey County of 46% and for the London Borough of Richmond of 52%. The latter showed an increase of 52% in the Outer Metropolitan Area and of 62% for the whole of the London area. Finally, Mr Amos referred to the Valuation Office Agency's property market report for Autumn 2001 which showed that the value of residential building land had risen in inner and outer London by 97% and in the Southeast by 87%. Mr Amos concluded that this data showed that bullish market conditions prevailed in July 2001 and supported his view that the value of amenity land with hope value had increased by 40% to 50% since 1998.

21. The third element in the picture of value that Mr Amos sought to describe was the history of the transaction of the reference land itself. In March 1978 Spelthorne Borough Council had purchased 0.65 acres of land at the north east of the reference land for use as a car park. The price paid was £15,000 (£23,076 per acre). In 1998 the District Valuer valued the reference land at £66,000 (£18,082 per acre) for the purposes of the council's bid at auction. The

22. Mr Amos concluded, having considered all his sources of evidence, that the open market value of the reference land at the valuation date was £50,000 per acre or £182,500. Mr Amos said that he had taken the comparable evidence as his primary approach and had used property indices as a check. Applying an increase of 40 to 50% to the price paid in auction gave a value for the reference land of some £120,000. The balance of £62,500 was accounted for by hope value.

23. In relation to the claim for fees Mr Garson explained that his hourly rate of £200 was the middle band of his time rate and that this would have increased over the years. In estimating the time that he had spent on this matter since the CPO was confirmed he had looked at correspondence and had reviewed the work done on instructing surveyors, taking advice and dealing with the acquiring authority who he said had hounded him to spend money on the reference land. He said that he was very conservative in the number of hours that he was claiming for but accepted that he could not substantiate by any evidence either the number of hours (there being no time sheets available) or indeed the hourly rate itself. He agreed that it was Mr Amos who had progressed the claim and who had identified the comparable sites but he said that Mr Amos had consulted him and had met with him to discuss the matter. Nor was there any evidence that Philip Hodges and Co had charged the claimant, Weybridge Management Limited, anything. Mr Garson said that the claimant had not been invoiced and that his charges would have to be paid out of what was recovered as compensation. He said that the cost of his professional time would have to be recovered and that he had not known that the acquiring authority would insist on the submission of bills under these circumstances. He thought it ludicrous to expect him to do so although he acknowledged that he would usually bill a client on an interim basis and said that his partners (in Philip Hodges & Co and, since May 2000, in Kagan Moss & Co) had been "very indulgent" about the arrangements for payment in this case. He was not aware that the acquiring authority had asked him to substantiate the claim figure in the past. Mr Amos said that the involvement of Mr Garson, which he said was spent as a director of the claimant company, was reflected in Mr Amos's time sheets and cost analysis that were in evidence before the Tribunal.

24. Mr Amos provided details of the claim for his professional surveying services in his rebuttal report. The amount claimed was based upon hourly rate charges and was divided into three sections, one for each of Mr Amos's employers during the currency of the instruction (Mr Amos seemingly taking the instructions with him from one employer to another). The first section covers the period 21 June 2001 to 21 March 2005 when Ross Jaye Sayer employed Mr Amos and amounts to £6,375 (42.5 hours at £150 per hour). During the period 26 April 2005 to 8 August 2006 Mr Amos was employed by Donaldsons and spent a further 4.25 hours on the claim at £175 per hour, totalling £743.75. Finally, from 22 May 2007 to 25 July 2008, whilst at Michael Rogers, Mr Amos spent a further 45.75 hours at £175 per hour, totalling £8,006.25.

25. Three invoices were attached to the claim. The first was dated 31 October 2001 and was for £665 plus statutory interest and VAT. Mr Amos explained that this was the Ryde's Scale fee calculated on the acquiring authority's estimate of compensation of £50,000. The acquiring authority had reimbursed this amount. The other two invoices, issued by Michael Rogers and dated 14 February 2008 and 6 June 2008 were for £1,500 and £1,468.75 respectively, including disbursements and VAT. No receipts for any of these invoices were produced.

26. Mr Williams submitted that the acquiring authority's approach to the valuation of the reference land, based upon its use as public open space in the Green Belt, was misconceived. Any depreciation in value due to the scheme had to be ignored and it was therefore necessary to value the site without reference to (i) the proposed acquisition of the site by the council for future public use; (ii) proposal P5 of the Spelthorne Borough Local Plan (adopted in April 2001) which proposed to enhance the open nature of the site by laying it out as a village green with public access; (iii) the adopted planning brief for the enhancement of Orchard Meadow dated July 1999 which set out a proposal to enhance the reference land as a village green with public access; and, (iv) the planning permission granted to itself by the council in September 1999 for the change of use of the reference land to public open space and laying it out to perform the function of a village green. The reference land fell to be valued as land in private ownership, without any local plan allocation, outside the 1:100 flood area but within the Green Belt and the Lower Sunbury Conservation Area.

27. Mr Scherer had wrongly valued the reference land as Green Belt land for public use and the acquiring authority had persistently held to an obvious under valuation. At all times the acquiring authority had wrongly assumed that special interest could not be taken into account. That approach was of no assistance and ignored the assumptions and disregards that statute and case law required the Tribunal to make in the no scheme world.

28. The acquiring authority had a statutory duty to formulate and publish proposals for the preservation and enhancement of conservation areas. In 1992 they adopted the Lower Sunbury Conversation Area Preservation and Enhancement Plan in which they identified the need to enhance the appearance of Orchard Meadow. That aspiration would still have existed in the no scheme world and any development proposal would be tested against the need to preserve or enhance the conservation area as well as against Green Belt policy. The acquiring authority's evidence was that the reference land was unattractive, tatty and detracted significantly from the character of the conservation area. Mr Williams submitted that in the no scheme world a prospective bidder would see this as an opportunity since compulsory purchase of the site would not be available. The only way to improve the site would be through sensitive development. The acquiring authority would have to consider any such proposals on their merits and could not refuse them on the grounds that it aspired to use the site as public open space. Such consideration would have to acknowledge the site's characteristics, namely the predominantly residential nature of the conservation area, its good relation to local services and the presence of the council car park in the otherwise open area. These characteristics would

29. Turning to the remaining elements of the claim Mr Williams said that in its skeleton argument the acquiring authority had valued the claimant's entitlement to surveyor's costs at £7,118.75. It had not asked any questions about such costs during the hearing and it was unreasonable that it should dispute the cost below this figure in its final submissions. He said that all of the costs set out in the appendix to Mr Amos's rebuttal report would have to be made good by the claimant and to disallow any of them would contravene the principle of equivalence. They were recoverable in full, including VAT since the claimant was not registered for VAT.

30. The acquiring authority originally resisted the claim for the claimant's personal time but by the end of the hearing it had accepted the principle of this head of claim. Other than its original standpoint (now conceded to be wrong) it made no comment in evidence about the claim and it was unfair for it to submit that it had not been substantiated; the acquiring authority had never asked for more information or substantiation about this element. The claimant had not exaggerated Mr Garson's time which had been fairly estimated and charged. It was difficult to produce documentary evidence of time spent by an individual when working in a non-commercial situation and the claimant's approach was a reasonable one.

The case for the acquiring authority

31. Mr Scherer assessed the open market value of the reference land in the sum of £55,000. He considered the claimant's successful bid at auction in February 1998 in the context of the RICS Red Book and, in particular, the assumptions upon which the definition of open market value was based. He focussed on assumption (e) "that both parties to the transaction had acted both knowledgeably and prudently." He said that neither attribute had been demonstrated by the claimant when acquiring the reference land. Mr Garson had not acted knowledgeably by failing to investigate the planning status of the land and to check the area of the site. He thought "the Green Belt status should have led to an immediate conclusion that development was not going to be possible". The claimant's lack of prudence was shown in its argument that hope value was a factor in the valuation. Mr Scherer said that such value would only be pertinent if there was any practical basis to support it and there was none in this case. He said, "I reiterate that the site is in the Green Belt providing both in prudence and knowledge an absolute conclusion that development is not possible."

32. In cross-examination Mr Scherer said that no great weight could be placed upon the 1998 auction result. He denied that the auction was the best possible evidence of open market value. It was not a method of disposal that was well suited to the reference land where there were

33. Mr Scherer accepted in cross-examination that Mr Griffiths' subsequent offer of £100,000 could be taken into account and was not to be ignored because the Red Book assumed that no account was to be taken of a bid from a special purchaser. However, he said that Mr Griffiths' offer was not reliable because there was no information about the conditions under which it was made and because no transaction was completed.

34. Mr Scherer did not believe that the increases in building land values and house prices described by Mr Amos were relevant. There was no data available to facilitate an analysis of changes in land values in the Green Belt. He accepted that the residential market was buoyant at the valuation date and that there was an upward trend in prices and he did not assert that the value of Green Belt land had gone down since 1998. Furthermore he agreed that the reference land was well located in relation to local services, had no access problems and was in an attractive setting with development on two sides.

35. The acquiring authority's valuation of £55,000 (£15,000 per acre) was described by Mr Scherer as "a reasonable value for open Green Belt land for public use" and excluded any element of hope value. He said that he had been instructed to value the site on the basis of a public use which he argued did not devalue it; in fact the land was worth less in its original state when in private ownership. However he accepted that, in the no scheme world, the Tribunal should value the reference land in private use and that he had provided no evidence of those values.

36. In reaching his valuation Mr Scherer considered the seven comparables cited by the claimant in its statement of case. Five of these he dismissed as being in an urban area and not in the Green Belt. Both the remaining sites, at Laleham Road, Staines and Broadmead Road, Old Woking were in the Green Belt. Mr Clay gave factual evidence about the first of these. In 1999 he was instructed to sell the Laleham Road site by private treaty on the basis of best offers. However, the vendor had an informal agreement with his neighbour that he would sell the land to him if he matched the best offer. Mr Clay said that about 20 offers had been received, most of which were in the range £20,000 to £40,000 and primarily for the purpose of grazing horses. However one person, who said he was a property developer from nearby Commercial Road, offered £150,000. Mr Clay did not know him and had not been in contact with him since. He considered this offer to be unreliable and to have reflected a development potential that he did not think existed. He did not believe the bidder would have completed the

37. The second of the Green Belt sites, at Broadmead Road, was divided into plots and, according to Mr Scherer, the asking prices were "irrelevant except for the gullible and ill advised". The site was at risk of flooding and was subject to an Article 4 Direction from Guildford Borough Council preventing the plots from being individually enclosed.

38. The District Valuer had prepared two valuations of the site, both of which had been relied upon by the acquiring authority. The first of these, dated 11 February 1998 was in the sum of £66,000, and had informed the council's bid for the reference land at the public auction that month. Mr Scherer accepted that this valuation included hope value. The second report, dated 29 September 1999, was in the sum of £50,000 and excluded hope value. It formed the basis of the acquiring authority's unsuccessful attempt to acquire the land by private treaty in 1999. Mr Scherer described the difference in the two valuations as follows: "Thus, the reduction in value is reflected by the withdrawal of speculative hope value advanced for auction purposes given the updating in the planning notation."

39. Mr Scherer reviewed the five sites identified by the District Valuer. At the hearing he accepted that no weight should be given to the sites at Chobham or East Clarendon. The remaining sites were at Wellington Meadows, Kingston bypass and Purley. He adopted the District Valuer's analysis of the values of these sites (and which was broadly the same as that of Mr Amos, reported at paragraph 15 above) and said that these supported his figure of £15,000 per acre once suitable adjustments had been made for spoil removal and enclosure (Kingston bypass) and access (Purley). Mr Scherer rejected Mr Amos's further adjustments to these comparables saying that the date of transaction in each instance was not relevant because there was no evidence that the value of such sites would change in line with house price or building land indices. He contested Mr Amos's assumptions about their location, size and use saying that his conclusions about the sites were flawed. He also rejected Mr Amos's reliance upon the sale of five urban sites with residential planning permission saying that to link Green Belt land with such sites was entirely wrong. In a supplementary report Mr Scherer gave details of three comparable Green Belt sites at Bramley, Surrey that were sold at auction in February 2009. The prices ranged from approximately £6,500 to £14,000 per acre. At the hearing he said that these sales "were a clue to the value of Green Belt land in a generic sense."

40. Finally, Mr Scherer rejected the idea that the reference land could be divided and sold as 35 individual plots. Mr Amos had produced six comparables of such sales although Mr Scherer pointed out that no dates were given and four of the comparables were in fact based upon asking prices. He argued that these sites were not a fair reflection of market value since "clearly the purchasers were neither prudent nor knowledgeable, two of the fundamental tenets required in the RICS Red Book definition of market value."

41. Mr Scherer said that he knew of no entitlement to compensation in principle for the claimant's own "loss of time" but accepted the principle of the claim for surveyor's fees (excluding post reference costs) subject to proper substantiation.

42. Mr Brooks gave expert planning evidence. He gave details of national and local planning policies both at the date of the auction in 1998 and at the valuation date. He said that there was nothing in such national policy (specifically in PPG2: Green Belts), the development plan (which at the auction date was awaiting the inspector's report following the local plan inquiry), the Conservation Area Preservation and Enhancement Plan, 1992 or any other planning document upon which the claimant could reasonably have based an assumption that the site had any development potential. By the valuation date he said that this conclusion was stronger because of the adoption of the Spelthorne Borough Local Plan in 2001 and the issue of a planning brief in July 1999 regarding the enhancement of the reference land. The adopted local plan continued the long standing Green Belt notation of the site and resisted development outside a range of compatible uses unless in exceptional circumstances. There were no such circumstances in this reference. The existence of development pressure in the Green Belt was a sign that it was achieving its purpose and not that those pressures should be acceded to.

43. The reference land was allocated in policy P5 of the local plan for:

> "Enhancement of the open nature of the site, including laying it out as a village green with public access, consistent with its Green Belt status and location within the Lower Sunbury Conservation area."

In his report on the local plan inquiry the inspector rejected the notion of any form of enabling development (such as housing) on the reference land. The land was not in a mixed-use town centre location and it was not urban open space. It was in the Green Belt on the edge of the centre of the historic village of Lower Sunbury.

44. Mr Brooks provided further details about the council's acquisition of land to the north east of the reference land for a car park in 1978. A sum of £15,000 was paid for 0.65 acres but this included an area of land equivalent to a house plot fronting The Avenue and which was within the defined urban area. The price reflected the residential development potential of this plot.

45. In summary Mr Brooks considered that, due to its Green Belt and conservation area status, there was no prospect of any development on the reference land at the valuation date. The lifetime of the local plan was until 2016 and the recently adopted Core Strategy looked as far ahead as 2026. Housing land availability in the Borough was not a problem. There was certainty against development for a long period. There was nothing in the version of PPG3: Housing published in March 2000 that affected this conclusion. Paragraph 68 remained strongly in favour of maintaining the Green Belt.

46. Mr Brooks accepted that the state and condition of the reference land was harmful to the character of the conservation area but he stressed the importance of the openness of the site which he said was a critical feature that would be lost if any development were allowed to enable visual improvements to be made. He did not believe that the council would have been forced to consider options for enhancement other than its proposal to use it as public open space, but he acknowledged that it had "no plan B" apart from compulsory purchase.

47. Mr Lewis submitted that the claimant's assertion of hope value was without foundation. Mr Brooks's evidence, which was the only expert planning evidence before the Tribunal, was compelling in its analysis of planning policy and in its conclusion that there was no development potential in the reference land, a conclusion reinforced by the inclusion of the site with a conservation area and its proximity to the flood plain. The fact that the council would still have had aspirations for the enhancement of the reference land in the no scheme world did not justify the assumption that this gave it development potential.

48. The claimant had not substantiated Mr Garson's time spent or his hourly rate, both of which Mr Lewis said were unreasonable and excessive. He said that it was Mr Garson's time spent as a director of the claimant company that should be compensated, if at all, as per *D B Thomas v GLC* [1982] 1 EGLR 197. Mr Garson had not charged his "clients" for his involvement in submitting the claim and he had even suggested that he might never seek any remuneration from them. Nor had the claimant demonstrated its inability to reclaim the VAT on any of Mr Garson's fees. Mr Lewis argued that no award of compensation should be made under this heading.

49. Mr Amos claimed for a total of £14,460 of his own surveying fees, but of this amount £8,006.25 appeared to be attributable to the reference rather than to the client. The maximum compensation was thus £7,118.75. However, none of the fees incurred while Mr Amos was working at Ross Jaye Sayer & Co were ever charged to the claimant and were therefore not compensateable as losses since the claimant had never incurred them. That left only £78.75 (£743.75 in respect of work done whilst Mr Amos was at Donaldsons less the payment made by the acquiring authority of £665). VAT was not properly compensateable.

Conclusions

50. The acquiring authority criticises the claimant's reliance upon the February 1998 auction as the starting point for its valuation. It says that Mr Garson's successful bid for the site was neither knowledgeable nor prudent and therefore did not comply with the RICS Red Book definition of market value. Therefore it cannot be used as a proper basis for the open market valuation of the reference land for the purposes of compulsory purchase compensation. I reject that argument. One of the exceptions the RICS Red Book makes to the application of its definition of market value is in respect of advice during the course of litigation. The current version of the Red Book describes this exception at PS 1.2 (2):

> "Valuations prepared in anticipation of giving evidence as an expert witness before a court, tribunal or committee in connection with litigation related matters in which property value is in dispute."

The valuation that is required in this case is the assessment of the open market value of the reference land in accordance with rule 2 of section 5 of the Land Compensation 1961:

> "The value of land shall, as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise."

51. I agree with Mr Williams that rule 2 envisages a hypothetical sale but one that is conceived as taking place in a real market (*IRC v Gray* [1994] STC 360 and applied in *Ryde International Plc v London Regional Transport* [2004] EWCA Civ 232); that the objective is to determine what would in real life have been the best price reasonably obtainable for the land to be valued and that the bids of special purchasers can be taken into account (*IRC v Clay and Buchanan* [1914] 1 KB 339). In *IRC v Gray* Hoffman LJ said at 372 a-e:

> "In all other respects, the theme which runs through the authorities is that one assumes that the hypothetical vendor and purchaser did whatever reasonable people buying and selling such property would be likely to have done in real life. The hypothetical vendor is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business, negotiating seriously without giving the impression of being either over-anxious or unduly reluctant. The hypothetical buyer is slightly less anonymous. He too is assumed to have behaved reasonably, making proper inquiries about the property and not appearing too eager to buy... the concept of the open market involves assuming that the whole world was free to bid, and then forming a view about what in those circumstances would in real life have been the best price reasonably obtainable...
>
> It often said that the hypothetical vendor and purchaser must be assumed to have been 'willing', but I doubt whether this adds anything to the assumption that they must have behaved as one would reasonably expect of prudent parties who had agreed a sale on the relevant date..."

52. Whilst the RICS Red Book does not command mandatory compliance in the valuation which is the subject of this reference I nevertheless consider that, in accordance with the statutory definition and relevant case law, prudence, reasonableness and diligent inquiry are attributes to be expected of the hypothetical purchaser when determining the open market value of the reference land. In this respect the main criticisms levelled at Mr Garson are that he did not realise that the area of the reference land was overstated in the auction particulars and that he had not made sufficient inquiries about the planning status of, and the restrictive policies applying to, the site. Consequently he had overbid at auction and the price paid for the reference land was an unreliable guide to its open market value at that time.

53. I do not accept the acquiring authority's criticisms of Mr Garson. He knew the site well, having an office that overlooked it, and said that his bid was not based upon a price per unit area. He was bidding for the whole site. He also knew that the site was in the Green Belt and

54. Nor do I accept Mr Lewis's submission that, even though the other bidders at the auction may have been genuine, there was no evidence to infer that they were prudent and knowledgeable and that they may well have been pushed to go further than they intended by Mr Garson's (allegedly) insistent bidding. The auction was public and open and there is no evidence to suggest that the bidders were ill informed or influenced by Mr Garson's pattern of bidding. Mr Brooks said that the auction was not the best evidence of an open market transaction because this was not a case where all the (valuation) factors were obvious. I do not see that as a reason to condemn a sale by auction; if anything such uncertainty as there may have been about the site was best resolved by maximising its exposure to the public and an auction is probably the method of disposal that was most likely to achieve this.

55. Whilst I accept Mr Amos's opinion that the auction result is the best starting point to value the reference land I do not place weight upon the subsequent offers that Mr Garson says were received by the claimant. There is scant evidence of the nature of those bids, the terms upon which the offers were made are unknown and there is nothing at all in writing from the bidders themselves.

56. I turn next to hope value. Both Mr Scherer and Mr Brooks declaim their belief that no such hope value exists. Mr Scherer says:

> "... to assert an uplift in value on Green Belt land on these bases is inevitably and ultimately flawed ... it would be an exceedingly imprudent valuer who did impute hope value for development on such land."

Mr Brooks goes further:

> "... it is beyond reasonable belief, given national, regional and local policy, and its planning history and constraints, that this site could ever be released for development. A prudent person who ensured they had appropriate knowledge of the site could not come to any other reasonable conclusion."

57. The stridency of these views was based in large part upon the experts' apparent belief when writing their reports that the proposed public use of the reference land for open space is a matter that could be taken into account when considering its value and the prospect of hope value for development. That belief was shared by the District Valuer in his report to the acquiring authority dated 29 September 1999:

> "Since our previous valuation report, the council has produced a Planning Brief for the site...
>
> The document in effect clarifies policy for maintaining the site as an area of public open space, with use as a village green under the protective envelope of the Green Belt. It also rules out the possibility of the land in the foreseeable future being available for any form of redevelopment...
>
> In view of the measures that are now in hand to secure the future of this land as open space for the enjoyment of [the] general public, we have valued this land excluding any 'hope value' for any other possible future development."

58. The acquiring authority accept that the scheme in this reference includes the acquisition of the reference land to secure the future public use of the site as well as the planning policy that underlies that use and its allocation as public open space and/or a village green. Specifically this includes the allocation of the reference land under policy P5 of the Local Plan, the Planning Brief adopted in 1999 and the planning permission that the council granted to itself in 1999 for the laying out and use of the reference land as a village green.

59. It is not disputed that any effect on the open market value of the reference land that is due entirely to the scheme underlying the acquisition must be ignored. In my opinion the acquiring authority were wrong to take into account the effect that the scheme, including its associated planning policy, had upon such open market value and which they expressed as a hardening of planning policy against development and the existence of hope value. The key planning policies in the no scheme world with which I am concerned are twofold: the continued allocation of the reference land as Green Belt and its inclusion within the Lower Sunbury Conservation Area. Those policies were in force at the date of the auction in February 1998. At that time the District Valuer's opinion about hope value was different:

> "As mentioned in the Town and Country Planning section of this report, there is pressure on this land to be developed. With this in mind we are of the opinion that the market would attach some 'hope value' to this land, over and above the value for its existing use. This element of 'hope value' is speculative and is very difficult to quantify. We have included an element of 'hope value' in our opinion of value."

60. The District Valuer valued the reference land in the sum of £66,000 in February 1998 and £50,000 in September 1999, at which time he excluded any hope value. There is no suggestion that values declined over that period and so (assuming static values) it would appear that the hope value allowed by the District Valuer in February 1998 was 32%, there being no other explanation given of the difference in values between the two dates.

61. In *Transport for London v Spirerose (in administration)* [2008] EWCA Civ 1230, Carnwath LJ, giving the judgment of the Court, said at paragraph 67:

"In our view there is no anomaly in giving a hope value in cases where there would have been a possibility, but less than a probability, of planning permission. It is one thing, in the interests of consistency and simplicity, to assume the grant of planning permission when it would probably have been granted. It is quite a different thing to deprive the landowner of any hope value when such value would have been reflected in the market even though planning permission was improbable. To exclude such value would be contrary to the fundamental principles of assessment of compensation under the 1961 Act."

62. The acquiring authority's experts have assumed there can be no hope value because of what they see as a prohibitive planning policy regime against development that is not compatible with the Green Belt. I have already found that they were wrong to rely on those parts of that planning regime that were derived from the scheme itself and have noted that in the absence of such scheme related policies the District Valuer said in February 1998 that there was hope value attached to the reference land. What is important in assessing hope value is the attitude of the market to the prospects of future development. From the evidence I find that the reference land had the following characteristics that would have influenced the market's perception of hope value both at the date of the auction in 1998 and at the valuation date:

(1) It represented a passive, long-term investment that generated no significant or regular income stream.

(2) Any prospect of development was not short-term.

(3) There was a significant risk that any hope value would not be realised and that the purchaser would lose any capital in excess of the existing use value of the site.

(4) Planning policy was against development. There was a long-standing allocation of the site as Green Belt as well as its inclusion within a conservation area.

(5) The opportunity would be of interest to speculators for whom a purchase price of up to £182,500 would not be a deterrent.

(6) The risk of flooding was not a material factor.

(7) By the valuation date both the value of houses and of residential building land had increased. The rewards of obtaining planning permission had therefore improved whilst the risks had not worsened (it being necessary to ignore the effect of the scheme-related planning policies that had been introduced).

63. I am satisfied that hope value was reflected in the purchase price at the auction in February 1998 and that it remained at the valuation date, a conclusion reinforced by the improved residential market and the Government's new approach to planning for housing in PPG 3: Housing (March 2000) which said at paragraph 68:

"The Government is strongly in favour of maintaining the Green Belt. There may be occasions however, where Green Belt boundaries have been tightly drawn and there may

be a case for reviewing these boundaries and planning for development where this would be the most sustainable of the available options. An extension of an urban area into the Green Belt may, for example, be preferable to new development taking place on a green field in a less sustainable location. Nonetheless, the Government regards this as an exceptional policy that should not compromise the objectives for which Green Belt were designated."

This may have given limited encouragement to purchasers that a review of the Green Belt boundary might be justified at some stage. In the no scheme world Mr Brooks accepted that the council had no plan, other than its acquisition, to improve the unkempt appearance of the site. Mr Williams submitted that under these circumstances the acquiring authority would have had to give serious consideration to allowing some enabling development in order to enhance and preserve the conservation area. It is possible that this proposal might have hardened a purchaser's hopes of an eventual development, although Mr Brooks made the valid points that the inspector at the local plan inquiry had not supported the principle of such development and that a critical feature of the reference land was its openness (and not just its visual appearance). Furthermore I note the last sentence of paragraph 2.6 of PPG 2: Green Belts: "Detailed boundaries should not be altered or development allowed merely because the land has become derelict".

64. Many of the comparables are of little assistance. Some are of no weight, notably those from both parties that give details of recent (2009) transactions (or, indeed, just the asking prices). I also discount Mr Amos's comparables of sites which have been sub-divided into plots. The main such comparable that he relied upon was at Broadmead Road, Old Woking but he did not provide details of the sales prices actually achieved. I do not consider that the reference land would have been sold by this method of disposal. I can see no basis for the assumption that ownership would be so fragmented and, indeed, it was not sold in 1998 in this way. I agree with Mr Scherer that the evidence of the sale of such individual plots, even when fully known, is inherently unreliable as representative of transaction evidence to be used to value the reference land as a whole. Mr Amos accepted that the Broadmead Road site had been marketed over the internet to people who could fairly be described as gullible. I also accept Mr Brooks's evidence that the council would have issued an Article 4 Direction to prevent individual enclosure of such plots.

65. The other comparables relied upon by the parties were either of sites acquired for public use (which are not of relevance in the no scheme world) or of sites with no hope value. The site that was most comparable to the reference land was at Laleham Road, Staines. The acquiring authority dismissed it as an "inexplicable aberration" and having taken place "in very singular circumstances". I share the acquiring authority's concerns about the sale, based as it is upon a neighbouring land owner matching a price from a local third party, said to be a developer, but who the vendor's agent, Mr Clay, had not heard of before nor heard from again, and whose bid was over three times that of the majority of the remaining 20 or so bidders, in circumstances where the agent had specifically said in the sales particulars that the site had no development potential. Whilst the transaction was completed at £150,000 I consider this was a special purchase acquisition the circumstances of which are not similar to those at the reference land.

66. In his supplementary report Mr Amos made a series of factor adjustments to three comparables, including Laleham Road, "the inherent combination" of which "dictate the level of value" (see paragraph 16 above). The use of those factors led to upward adjustments in the comparables that varied from 60% to 120% and which Mr Amos accepted threw doubt upon the utility of the end figures as comparable evidence. I find these adjustments to be arbitrary, unsupported and of no assistance.

67. Mr Amos also gave evidence of the change in residential and building land values between 1998 and the valuation date. These showed increases of some 50% and 90% respectively. There was no information about the increase (if any) of Green Belt land or of land with hope value for development. The acquiring authority did not accept the applicability of the indices relied upon by Mr Amos but in cross-examination Mr Scherer said that between those dates the residential market was buoyant with an upward trend in all property types.

68. In his expert report Mr Amos said that it was reasonable to suppose that the reference land would have increased in value between 1998 and 2001 "irrespective of any extraneous factors". He then ignored hope value and considered the site "as just amenity land" concluding that growth of at least 10% per annum would have occurred. He said that this would value the subject property at circa £110,000. In his supplemental report he said that this was an underestimate and that the growth figure was closer to 40% to 50%. In fact there is little difference between the two figures since 10% per annum growth from February 1998 to July 2001 amounts to 38.5% growth overall. It would appear, however, that Mr Amos has applied the growth factor to the auction price of £82,000 which I have found includes rather than excludes hope value. So his figure of £110,000 did not, in my opinion, just reflect amenity value.

69. I am not satisfied that Mr Amos's valuation of £182,500 is supported by the evidence. It represents an increase of more than 26% per annum from the 1998 auction price which I consider to be unrealistically high. At the valuation date, in the no scheme world, the planning policies applicable to the reference land were substantially no different from those applicable in February 1998 apart from the publication of amended versions of PPG 2 and PPG 3. These may have given very limited encouragement for future residential development but not, even by Mr Amos's admission, before at least 10 and probably 15 to 20 years. On the other hand at the valuation date there was a strong residential market and, although the risks of achieving a planning permission on the reference land had not improved materially since 1998, the rewards if such permission was granted had significantly increased. This, together with the fact that I think in such a market it is reasonable to assume an increase in existing use (amenity) values, leads me to adopt, considering the evidence as a whole, a growth rate of 5% per annum in the value of the site since 1998. This gives a (rounded) value of £100,000 (including hope value) which I determine to be the open market value of the land taken.

70. At the hearing I raised a number of queries about the claim for surveyor's costs and the claimant's own time. The reference to this Tribunal was made on 20 June 2007 and any costs incurred in respect of it fall to be determined in the reference. I therefore do not allow any of Mr Amos's costs whilst employed by Michael Rogers, a total of £8,006.25. The balance of

71. Finally, I deal with the claim for the claimant's own time. The first point to note is that the claimant is a company and not an individual so that a claim for personal time appears to be inappropriate. But Mr Amos said that what is being claimed is the time that Mr Garson spent dealing with the acquisition in his capacity as a director of the claimant company. But that is not what Mr Garson said in cross-examination. He said that Philip Hodges (where Mr Garson was a director) had not invoiced the claimant and that "I must pay this [any costs of Philip Hodges] out of what [compensation] is recovered." When challenged that there was no evidence that this was the arrangement, Mr Garson replied, "My professional time has to be covered." In my opinion Mr Garson's time was being spent on the compulsory acquisition not as a director of the claimant company but firstly as a director of Philip Hodges and subsequently as a partner of Kagan Moss & Co. This view is supported by Mr Garson's response in cross-examination to the question that he would normally be expected to bill as time went on. He replied, "Yes. My partners have been very indulgent." I understand this to mean that Kagan Moss and Co expect to receive payment but have delayed this until the compensation has been determined. Asked in re-examination whether, in respect of his own time, Mr Garson would produce an invoice to himself he answered, "Yes. When it [the compensation claim] is done and dusted it will be sorted out". I interpret that statement to mean that Mr Garson, as a partner in Kagan Moss & Co will, eventually, invoice the claimant for his time spent. But that has not yet been done and the claimant has not substantiated the claim under this head for the 80 hours that Mr Garson says he spent on the case.

72. In his expert report Mr Amos said that "... the claimant is preparing a time sheet, itemising the hours spent on this case which has taken him away from his usual business activity." That time sheet was not produced but Mr Amos said that the time spent by Mr Garson could be extrapolated from his own time sheet that was included with his rebuttal report. Having done this I estimate that the time spent by Mr Garson was approximately 10 hours prior to the reference being made. That compares with 46.75 hours spent by Mr Amos, who is primarily responsible for the conduct of the claim, over the same period. I think, in the absence of any other evidence, that this is a reasonable allowance. I also accept that a rate of £200 per hour was reasonable and I therefore allow a total of £2,000 under this head. I accept Mr Garson's evidence that the claimant company is not registered for VAT, but VAT will only be reimbursed by the acquiring authority on the sum I have allowed if the claimant produces a receipted invoice from the supplier of the service (which I assume to be Kagan Moss & Co).

73. I therefore award compensation in the total sum of £102,000. The parties are now invited to make submissions on costs, and a letter relating to this accompanies this decision, which will only become final when the question of costs has been determined.

Dated 16 July 2009

A J Trott FRICS