IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2017] UKUT 269 (LC)
Case No: ACQ/97/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory Purchase – Acquisition of land and premises in connection with town centre redevelopment scheme – valuation – disturbance – business extinguishment – Land Compensation Act 1961 section 5 rules (2) and (6) – Compensation determined at £201,073

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

(1) MUSTAFA BEHIC
(2) MERMER LIMITED
(3) ORHAN BEHIC **Claimants**

- and -

NORTHUMBERLAND COUNTY COUNCIL **Acquiring Authority**

Re: 4 & 4A Station Street, Blyth, Northumberland NE24 1ET

- -

Hearing date: 19 April 2017

Before: Paul Francis FRICS

At: Newcastle SSCS, Manorview House, Kings Manor, Newcastle upon Tyne NE1 6PA

- -

The claimants did not appear and were not represented
Martin Carter, instructed by DWF LLP, solicitors of Leeds, for the Acquiring Authority

The following cases are referred to in this Decision:

W Clibbett v Avon CC [1976] 1 EGLR 171
Lancaster City Council v Thomas Newall Ltd [2013] EWCA Civ 802

DECISION

Introduction

1. This is a decision to determine the compensation payable by Northumberland County Council ("the Council") to Mustafa Behic, Mermer Ltd and Orhan Behic ("the claimants") following the compulsory acquisition of land and premises at 4 & 4A Station Road, Blyth, Northumberland ("the reference land") pursuant to The Northumberland County Council (Blyth Town Centre) Compulsory Purchase Order 2010 ("the CPO").

2. The compulsory acquisition was due to the reference land (Plots 23 & 24) and many other sites being required principally in connection with the provision of a new 65,000 sq ft Morrison's foodstore and car park at Regent Street, Blyth, to replace an earlier and much smaller 1970's built first-generation supermarket that formerly traded as Presto. Most of the required sites have been acquired by agreement, and it is understood that this reference is the only one under this CPO to proceed before the Upper Tribunal.

3. The claimants did not appear at the hearing and were not represented. Mr Martin Carter of counsel appeared for the acquiring authority and called Ms Elizabeth McLoughlin BSc (Hons) MRICS of Sanderson Weatherall, Newcastle upon Tyne, who provided a comprehensive statement setting out the background to the scheme and the acquisition of the reference land, and gave expert evidence relating to the value of the land and the extinguishment of the claimants' businesses.

Facts

4. Prior to the hearing, the Council had helpfully prepared a draft statement of facts and issues to be determined which was submitted to the claimants, but despite several attempts to elicit their agreement, no response was received. Nevertheless, the contents do not appear to me to be controversial, and from this document together with the claim, the Council's statement of case and its expert evidence, I find the following facts

5. The reference land comprised, at 4 Station Street, a predominantly brick and part rendered two-storey commercial unit consisting of, at ground floor, a hot food takeaway trading as "Marmaris Kebab and Pizza House" that contained a retail sales area and serving counter together with a preparation area. An open staircase led to the first floor which contained a kitchen/food preparation area along with a walk-in cold store. A wc and staff amenity area was located off the landing. The building, which had a net internal floor area of 106 sq m (1,141 sq

ft) was believed to have been constructed in the 1960s. It had subsequently been extended, particularly to the rear to create 4A Station Street. This was a basically constructed single storey warehouse/garage unit approached over a narrow entrance lane and small yard (suitable only for small vehicles) to the east of No. 4. It was constructed of brick with a mono-pitch roof corrugated roof over a steel frame and other than mains electricity had no services connected. Although physically attached to No. 4, the buildings were not interlinking and were thus capable of separate occupation, however it should be assumed that the occupier of 4A would need to have use of the wc facilities and water supply in No.4. No. 4A was suitable for secondary retail sales or other quasi-commercial uses such as a small repair shop. The net internal area was 95 sq m (1,024 sq ft).

6. The premises were located on the north-west edge of Blyth town centre in a predominantly tertiary retail zone and adjacent to residential areas lying to the north and north-west. There was a Council owned public car park immediately next door to the reference land to the west and three small shops to the east (fronting Regent Street) which had consisted of a Pizza King takeaway, a musical instrument shop and a mobile phone shop trading as The Phone Doctor. All three of those units ceased trading between 2005 and 2010. Within the vicinity there was also a florist, a veterinary surgery, furniture shop, hairdresser and a frozen food store together with a cycle shop, sandwich bar and a taxi office.

7. The freehold of the reference land was owned by the first claimant, Mr Mustafa Behic who purchased it on 27 March 2007 for £50,000. No.4 was said to be subject to a lease (which has not been produced) to Mermer Ltd (the second claimant), the Company that ran the takeaway and of which the freeholder's wife Susan was the sole director. The first claimant was an employee of the Company. The third claimant, Mr Orhan Behic (Mr Mustafa Behic's son), held a lease of No.4A and operated a retail unit known as "Bits & Bobs & The Phone Shop" in addition to, according to the claim document, also being employed by the second claimant.

8. In February 2008, the first claimant attended a meeting at which the Council's regeneration proposals for the area were explained, and was advised that it was intended to acquire all the land required by agreement wherever possible. The Council's intentions were then confirmed to the claimants in writing and, following an inspection of the reference land by its agents, Sanderson Weatherall ("SW") at which, according to the Council's expert, Mr Behic advised that he was not interested in receiving an offer for the land), an offer of £115,000 was nevertheless made in February 2009. There having been no response, the offer was re-issued in July 2009. Following that, and a recommendation by "SW" that he appoint a surveyor to act on his behalf, the first claimant engaged Mr Alistair McGillivray of John McGillivray, Chartered Surveyors. Unsuccessful negotiations then ensued between January and May 2010. The CPO was made on 9 July 2010, and an objection was lodged by the first claimant in August 2010. In that month, Mr McGillivray advised that he was no longer acting. In September 2010 SW provided the claimants directly with details of potentially suitable premises for the relocation of the claimants' businesses.

9. Following notification on 12 October 2010 from Rook Matthews Sayer ("RMS") that they had been appointed to act as the claimants' agents, and that a claim for compensation in accordance with the provisions of the Land Compensation Act 1961 would be forthcoming, SW provided them with schedules of potential relocation sites that were available in the market. This was updated in January 2011. The first claimant attended the public inquiry into the CPO in March 2011. In April 2011, the first claimant was advised that if the CPO was confirmed, possession of the reference land would be required on or around 31 January 2012. The CPO was confirmed by the Secretary of State on 3 June 2011 and on 22 June the Council's notification of its intention to execute a General Vesting Declaration ("GVD") was served.

10. During the CPO process, discussions had continued between the claimants' agents and the Council particularly in respect of a site on the corner of King Street and Regent Street, Blyth, a few yards away from the reference land, which was partly owned by the Council, and partly in private ownership. The Council subsequently advised that it was prepared to dispose of its part for the construction of two retail units subject to planning permission and other matters being resolved, and provided details of the private owner so that the claimants could contact them direct. Eventually RMS advised SW that the proposed scheme was not financially viable and negotiations in that regard terminated.

11. The GVD was made on 18 October 2011 and the reference land formally vested in the acquiring authority on 31 January 2012 (which is the valuation date for the purposes of this reference). Although a request for a short extension to the claimants' occupation was agreed in principal subject to a tenancy at will being formally entered, the documentation was not completed and possession was finally obtained by forced entry on 6 February 2012 – the claimants stating at that time that they would not be removing any of the catering or other equipment or the remaining stock at No.4A – this all subsequently being sold at auction by the Council.

12. A formal claim for compensation was eventually made by RMS on 15 March 2013 without supporting evidence. On 8 July 2013, the first claimant advised the Council that he had dis-instructed RMS and, also, that he "did not want any further meetings with his solicitors" who at the time were Bond Dickinson, Newcastle upon Tyne.

13. The Notice of Reference was eventually made by the Council on 16 September 2015 together with a brief statement of issues which noted that a formal claim for compensation had yet to be received from the claimants. A response was filed by the first claimant on 28 October 2015 together with a statement of case and a claim amounting to £301,306.40 plus a basic loss payment calculated (incorrectly) at £12,000. The Council's statement of case in reply was filed on 11 December 2015. In an email to the Tribunal dated 8 February 2017 the Council's solicitors pointed out that neither its statement of case nor Ms McLoughlin's expert witness report of 15 February 2016 had dealt with the claims by the second and third claimants. Permission was thus sought to formally join the second and third claimants to the reference, to file an amended statement of case, and submit a brief supplementary expert report to cover these claims. Permission was granted by an Order dated 16 February 2017 and the relevant documents were filed and served on 27 and 28 February 2017 respectively.

Issues

14. The issues for determination can be summarised as:

First claimant	1) Value of the freehold interest in the reference land 2) First claimant's time
Second claimant	Losses pursuant to the total extinguishment of the business carried on by Mermer Ltd at 4 Station Street
Third claimant	Losses pursuant to the total extinguishment of the business undertaken by Mr Orhan Behic at 4A Station Street

The Claim

15. The claim that accompanied the first claimant's statement of case dated 28 October 2015 was set out thus:

Heads of claim		**Amount claimed**
Freehold interest		£225,000.00
(Plus statutory basic loss payment)		
Total extinguishment of business		
Loss of profit		£20,000.00
Loss on forced sale of equipment:		
Value to owner	£40,000.00	
Less net proceeds from sale	£ 1,210.00	
		£38,790.00
Loss on forced sale of stock		
(Value to owner)		£ 5,000.00
Redundancy payments		
Mustafa Behic	£3,024.00	
Notice	£1,728.00	
Holiday pay	£ 806.40	
Orhan Behic	£ 576.00	
Notice	£ 576.00	
Holiday pay	£ 806.00	
		£ 7,516.40

[First] Claimant's time	£ 5,000.00
Total claimed	**£301,306.40**
	Plus, basic loss claimed at £12,000.

16. Mr Mustafa Behic, who has been unrepresented since July 2013, said in his statement of case that he laid the blame fairly and squarely on the Council for the fact that this matter had not been satisfactorily concluded by negotiation. It had always been the claimants' intention to relocate within Blyth, but SW's initial offer in June 2009 of £115,000 was insufficient to allow this to happen and far less than the property was worth, let alone if it was to include the loss of profits and compensation for other factors connected with the enforced relocation. Mr Behic referred, as an example, to *28-30 Bowes Street, Blyth* which had sold for £175,000. It was a terraced building on a plot of equal size to No. 4 Station Street alone. Further, the reference land had added value in that No.4 Station Street had the benefit of an A5 hot food takeaway licence and the premises were immediately adjacent to a public car park.

17. Following the claimants' change of experts in October 2010, Mr Behic said that he had advised Mr Andrew Toes of RMS that it was their intention to relocate, and a search commenced for suitable alternative premises. A property on Regent Street which was on the market for £285,000 was considered (believed by Ms McLoughlin to be a corner property known as *30 Regent Street/2 Simpson Street*), but the Council said it would constitute betterment as it was closer to the town centre, even though it did not have the yard or buildings to the rear that 4 and 4A Station Street had. Another property in King Street (probably, according to Ms Mcloughlin, *7-8 King Street*) on the market at £400,000 was dismissed for similar reasons. As to a plot of land that was partly owned by the Council and partly by a Mr Bell and located on the corner of Regent Street and King Street, Mr Behic stated that despite the site being smaller than that which the reference land occupied, he had been prepared to be co-operative and "willing to lose out to move matters forward", SW had advised him that the Council wanted £100,000 towards the cost of acquiring the land and building a shop. This was not acceptable. Other available properties were considered (although not specifically detailed in the statement) but, Mr Behic stated, "At every turn, SW had an excuse and no interest in relocating my business."

18. Mr Behic stated that after possession was taken of the reference land, he and Mr Toes had a meeting with SW, at which they were told the intention was to extinguish the businesses, but they reiterated the relocation intention. Soon afterwards, at another meeting, a figure based upon total extinguishment was offered and the claimants were urged to accept an advance payment of £131,692.50 (under s.52A of the Land Compensation Act 1973 – being 90% 0f the Council's estimate of the level of compensation due) and the third claimant was advised to accept £6,600. At subsequent meetings and in correspondence, efforts were made to persuade him to accept the advance payment, together with a cheque from Sutherlands Auctioneers for the proceeds of the sale of the fixtures, fittings and equipment that had been left on the premises. All of these offers were refused on the grounds that they were too low and insufficient to enable them to relocate and re-start their businesses.

19. An allegedly final open offer (with limited time for acceptance) to cover all heads of claim which was made by the Council on 20 May 2013 was discussed at a meeting on 30 May at which the claimants' accountant, Mr Martin Atkinson, was also present. At that meeting the Council also provided details that had been sought relating to the compensation said to have been paid for other premises affected by the compulsory purchase. Mr Behic said that that offer was also rejected.

20. The statement of case then went on to say:

> "In 2012 my representatives along with the Council's representative decided to totally extinguish the business. We provided the Council with a professional value as well as comparables, buildings that were sold on the open market in 2010 were used as a comparison…"

and

> "Again in 2012, we provided values of the equipment that we were given by two separate parties…both companies specifically deal with the equipment I was using in my business. Yet all the values and evidence provided have been ignored."

The evidence

First claimant

Freehold value

21. Ms McLoughlin is a Chartered Surveyor and a partner in the Compulsory Purchase and Valuation Services Division of Sanderson Weatherall, Newcastle upon Tyne which she joined in 2008. Previously she had spent 7 years with Newcastle City Council in the Property Services Regeneration Team. She has 21 years property experience in the north of England, specialising in urban regeneration and compulsory purchase matters. Her firm was appointed by ONE NE in 2008 to acquire all the land (by agreement if possible) required for the proposed new Morrison's foodstore. In her main expert witness report she set out a detailed chronology of events as they related to the acquisitions in general, and the reference land in particular.

22. As to the value of the freehold interest in 4 Station Street she assessed four comparable sales within the general vicinity of the reference land, but outside the scheme. These were *7 Bowes Street* which ran parallel with Station Street, two roads away to the south and slightly closer to the town centre. It was a double fronted shop that had been trading in bridal wear, with storage above. Although it had been offered for sale in 2010 at an asking price of £190,000, it eventually sold in 2013 for £75,000 which represented a zone A rate of £116 per sq ft (psf). It was Ms McLoughlin's view that the analysed zone A rates were the appropriate comparator. *34a-36 Bowes Street* which comprised two retail units with storage above sold for £120,000 in September 2009. That equated to a zone A rate of £139. *6 Croft Road*, to the south of the town centre and considered to be somewhat isolated from it, sold in April 2011 for

£85,000 which produced an analysis in terms of zone A (ITZA) of £191 psf. This was, Ms McLoughlin said, a high figure which in her opinion was created by having had a large discount rate applied to the first-floor accommodation. *3 Croft Road* was a small unit which had been considered by the selling agent to be suitable for an A5 hot food takeaway use, but in reality, planning consent was refused due to concerns about cooking smells and lack of external space for waste storage. The sale price of £12,000 in September 2014, which equated to £29 ITZA reflected, Ms McLoughlin thought, the planning problems and the fact that it needed extensive fit out works.

23. Regarding the comparable that the claimant referred to in his statement of case (*28-30 Bowes Street*), Ms McLoughlin said that it was sold to what could be described as a "special purchaser" in that the premises, which were in any event vastly superior to those on the reference land and were only one street away from the newly refurbished Market Street in the town centre, was to be operated as a pharmacy. The premises were located close to number of medical practices and in applying to NHS England for the required licence, a demand had to be identified. The obtaining of such a licence is valuable and will in her view considerably increase the value of the property. The selling price of £175,000 and the resultant analysis of £295 psf ITZA reflected this.

24. Ms McLoughlin then responded to the other properties referred to in the first claimant's statement of case. *30 Regent Street and 2 Simpson Street* were superior to the claimants' premises in both location and condition. In any event, the agent who had been offering the property for sale advised that it did not, in fact, sell. *7-8 King Street* were larger and more modern premises and were in a busier, more bustling location. They also contained residential accommodation. According to the Land Registry, neither of the premises have been sold within the last 10 years.

25. As to the land on the corner of King Street and Regent Street that was part in Council ownership and part privately owned, Ms McLoughlin explained that RMS approached SW on the claimants' behalf. Enquiries revealed that the site may have been acceptable in planning terms for A5 use. Details of the private owner were provided and the Council agreed to meet the claimants' professional fees to undertake a feasibility study as to the potential financial viability of their proposed development. The claimants enquired whether there would be any grant funding available to assist with the development (which there was not) and then asked if the Council would build the proposed units. Again, they were advised that that would not be possible. It was important, Ms McLoughlin said, to appreciate that the claimants were entitled to compensation under rules (2) and (6) of section 5 of the LCA 1961. To construct premises for one dispossessed owner and not another would be unfair and unreasonable. The claimants were not entitled to compensation for equivalent reinstatement under rule (5).

26. Ms McLoughlin then set out comparable evidence relating to the acquisitions of other properties within the ambit of the CPO scheme. All the owners were professionally represented and the compensation was agreed either before or at the valuation date. The acquisitions included *21-33 Regent Street* and *2 Station Street*, a total of seven units acquired for £230,000 in January 2010. They were let as individual lock-up units on short term bases at rents ranging

from £3,000 to £5,000 pa with tenants responsible just for internal repair. These rents were not based upon area, and therefore the income could not effectively be converted to a reliable ITZA figure. *37-39 Regent Street* was occupied as a veterinary surgery that included a flat and was acquired for £180,000 on the valuation date of 31 January 2012. It was in very good condition and was in a more prominent position than the reference land. Due to the nature of the use and the specific fit-out for that purpose, Ms McLoughlin said she did not adopt the zoning method. She analysed it as having a rental value of £12,500 pa based upon £11 psf for the ground floor and £6 psf for the first, and capitalised it at 10% to give £125,000. The flat, which was exceptionally well appointed was valued at £55,000 to create the total acquisition price of £180,000.

27. The evidence of freehold sales both within and without the scheme area ranged between £116 and £179 psf ITZA (ignoring those such as 3 Croft Road which, for the reasons she gave, were not representative) and in her view an appropriate figure for 4 Station Street would be £160 psf ITZA which on its ITZA area of 630 sq ft produced £100,800 (rounded to £100,000). However, due to the general paucity of evidence of freehold sales Ms McLoughlin also analysed open market rental evidence in the area, outside of the scheme. This produced a range of values of between £10 and £17 psf. In the light of the fact that she thought there might be some marriage value between 4 and 4A Station Street, because many takeaway food operators have now signed up to smartphone apps for online ordering and delivery. The rear part could therefore be useful as storage of small delivery vehicles or scooters. She therefore adopted a zone A figure at the upper end of the range - £16 psf which produced a rental value of £10,000 pa.

28. Turning to 4A Station Street, whilst the third claimant used the premises for retail sales, Ms McLoughlin said they were also suitable for storage, warehousing or a small repair business such as lawnmowers and garden machinery. She thought it unlikely that this unit would be sold separately but due to the different nature of the use, she considered different comparable evidence to arrive at her valuation of that part. She also considered the fact that the third claimant was paying a rent of £4,160 pa (about £4 psf) but noted that it was not an arms-length transaction. It was her opinion that the freehold value of 4A Station Street was £50 psf equating to £50,000. This was supported by her opinion of rental value of the two units together at £15,000 (which means an open market rental value of 4A at £5,000 if let separately), capitalised at 10% giving the same figure. Adding the two units together the overall value became £150,000. Finally, Ms McLoughlin considered turnover related rents and the general level of rents paid by other hot food takeaways, and these again supported her opinions. Therefore, she said, the first claimant's figure of £225,000 for the freehold was considerably overstated.

Conclusion

29. I am entirely satisfied that Ms McLoughlin has carried out a thorough and well researched appraisal. She has also dealt with the, in parts, confusing and conflicting opinions and statements made by the first claimant in a logical and persuasive manner. With no formal evidence having been produced by the claimants either in terms of witness statements or expert

witness reports, or any rebuttal of Ms McLoughlin's valuation evidence, I accept it and determine the compensation payable to the first claimant under this head at £150,000.

30. Mr Mustafa Behic also pursued a disturbance claim for £5,000 said to be a sum to reimburse him for the time he spent in relation to the pursuance of compensation arising from the acquisition of his land in this case. The only reference to it before the Tribunal was the figure included in the itemised Heads of Claim set out at paragraph 15 above.

31. The Council acknowledges that time spent by claimants pursuing a claim for compensation is a valid head of claim, and that the Tribunal has some flexibility to adopt a "robust approach", akin to that adopted by the courts in the assessment of general damages (see *W Clibbett v Avon CC* [1976] 1 EGLR 171). However, the Council says that it needs to be supported by evidence that the diversion away from the day to day running of the business has caused or contributed to loss of, or reduction in, profit (see *Lancaster City Council v Thomas Newall Ltd* [2013] EWCA Civ 802 at paras 6-33). In this case, it is argued, this element the claim is wholly unparticularised and unsupported by evidence, and the Tribunal cannot therefore lawfully make an award of compensation.

32. The affected businesses are small enterprises and in addition to being the owner of the land acquired the first claimant has stated that he works in the business of the second claimant. Indeed, he produced some evidence to prove that fact (by copy letters from his accountant) although I accept that there were no documents provided to prove the employment or to support the precise figures the accountant had calculated. There is also undisputed evidence that the first and third claimants, and the first claimant's wife as sole director of the second claimant, attended several meetings with the Council and its representatives, and they must also have spent considerable time with their own advisers while they were instructed. The claimants will also have taken time to inspect potential relocation premises or sites. The suggestion that there is no evidence of time having been spent is therefore not one which I accept, although quantifying that time with any precision is a different matter.

33. The next question is whether the time which has been spent has been the cause of loss to any of the claimants. The claim by the first claimant can readily be dealt with. The Court of Appeal in *Lancaster City Council v Thomas Newall Ltd* (at paragraph 18) considered it "obvious" that an individual who was diverted from his own business to deal with the acquisition of his land thereby suffered a loss. At paragraph 26 Rimer LJ found no difficulty with such a case:

> "I can well see that if an individual faced with a compulsory acquisition reasonably devotes his own time to dealing with it, he ought in principle to be compensated for his time. He can fairly say that the expenditure of such time represents a loss to him."

The fact that the first claimant's involvement may have been both on his own behalf (as owner of the land taken) and on behalf of the other claimants (who suffered disturbance) does not seem to me to matter.

34. In circumstances where a small family business, with limited staff, is subject to the compulsory purchase of its premises, with all the associated distractions from the day to day involvement of the proprietors that will inevitably be caused, it is also, I think, reasonable to infer that time spent on matters relating to the claim would otherwise have been of value to the company, and that the diversion of the proprietors will therefore have caused it loss. Such loss will, I would suggest, in most cases involving small enterprises or one-man bands, be extremely difficult if not impossible to specifically quantify.

35. Adopting the robust approach that I can, I consider that in this instance the first claimant (effectively speaking for all the claimants) should be entitled to a modest award which I determine in the sum of £2,000.

36. I would add a comment on the importance, at the commencement of the CPO process, of acquiring authorities advising potential claimants to keep detailed records of time spent in participating in the process and pursuing claims. Where the prospective claimant is a company, it should be advised to maintain records of any additional payments made in respect of such time and any specific loss to the company which is otherwise said to arise. Such advice, given early in the process is extremely important as it will, of course, always be difficult to re-construct the necessary information later-on, or at the end of the acquisition process. Unrepresented claimants may be entirely reliant upon the acquiring authority for such advice. There is currently no formal obligation on acquiring authorities to impart such essential advice although of course many do so, recognising the public interest in the payment of fair compensation.

37. The importance of such advice and the need for it to be provided at an early stage by acquiring authorities is recognised by professionals in this field. The Tribunal welcomes proposals by the Compulsory Purchase Association to produce a pre-reference "protocol" relating to claims for compensation following compulsory purchase. This aims to set out agreed standards of good practice, including early engagement and the provision of advice on the significance of careful record keeping. It is hoped that the protocol will influence the behaviour of acquiring authorities and prospective claimants and thereby facilitate the early and efficient agreement of compensation.

38. Turning now to the claim for a basic loss payment pursuant to section 33A(1) and (2) of the Land Compensation Act 1973 at 7.5% of the open market value of the freehold interest in the reference land, this is a sum to which the first claimant is entitled. It is therefore determined at £11,250.

Second claimant

Business extinguishment

39. The first claimant claimed, on behalf of his wife's Company, Mermer Ltd (for whom he said he also worked) £20,000 for alleged loss of profits, £38,790 being loss of value to owner

from the forced sale of equipment and £5,000 for loss on forced sale of stock. Mermer Ltd was, as I have explained above, added as the second claimant following the making of the initial notice of reference, as that had been purely in the name of Mr Mustafa Behic.

40. Ms McLoughlin produced her assessment of the compensation payable under this head of claim in accordance with section 5, rule (6) of the 1961 Act. In assessing the value of goodwill, she said that there are three distinct methodologies to be considered: the direct market comparison approach, the income approach and the cost approach. She had been provided with Marmaris' trading accounts for the four financial years ending 6 June 2008 to 2011 which showed that in three of the years a loss had been made, and in only one, 2010, was there a small profit of £3,898 after tax. The accounts did, however, show that there was an established and stable turnover and it was evident that the business had been operating for a number of years. It was thus, in her view, appropriate to use the cost approach whereby a prospective purchaser of the business would anticipate that despite its recent unprofitability, it was reasonably well located, had the infrastructure to operate as a takeaway and, as she had said in connection for the claim for the value of the freehold, some potential to incorporate the rear premises at 4A into the operation.

41. There was, therefore, an opportunity to make a profit, and the purchaser would be prepared to pay "key" money based upon potential rather than current profits. Having considered the accounts, the trading history and cash flow together with the benefits of fit-out (less obsolescence) she valued the goodwill in the sum of £15,000.

42. In considering the claim for loss on the forced sale of plant and equipment, the only evidence that had been produced by the first claimant was a copy of an undated Schedule provided to Mr Mustafa Behic's former advisors, RMS, valuing the fixtures and equipment at "£36,226 less 20% for second hand value". Ms McLoughlin said she had several issues with this document. Adding up the prices for all the items, the correct total was £35,816. Whether VAT was included was not stated. It was also not clear if the figures given equated to estimated replacement cost or the cost when new (and many of the items were up to 20 years old). One of the items – 73 sheets of stainless wall plates, against which a figure of £5,475 was placed, has already been reflected in her assessment of the value of the goodwill.

43. As she was not an expert in the valuation of plant and machinery, Ms McLoughlin said she engaged the assistance of two of her colleagues from SW's Machinery and Business Assets Team, who inspected and photographed all the equipment whilst it was in situ. Primarily using the Depreciated Replacement Cost (DRC) approach, and having regard to the age and condition of each asset together with new prices, trade guides and internet guides to used prices and auction results, the value to owner was assessed at £15,000 from which the net figure achieved on sale of £1,210 was deducted giving a final figure of £13,790.

44. As to the claim for loss relating to stock, there was no information from the claimants regarding what that stock consisted of or about its alleged forced sale. Ms McLoughlin pointed out that the claimants had three months' notice of the possession date, and thus had sufficient

time to run down the stock to be run down and for losses to be mitigated. Following the repossession, they had also been allowed access to remove some frozen goods as they had been trading right up to that date (6 February 2012).

45. Regarding alleged redundancy payments for the first and third claimants, the figures sought in the sum of £3,024 and £576 respectively were provided to RMS by the second claimant's accountant, Mr David Atkinson FCCA, in January 2013 who said in his letter containing the figures that it was "against the wishes of the company who are desperate not to reconcile themselves to a cessation position." The first claimant was said to have been permanently employed since 6 August 1997 (14 years) and the calculation, in accordance with established principles was: 144 x 1.5 = 216x14. The third claimant was first employed on 6 April 2007 (4 years) and the calculation was thus 144 x 4. There was a further letter from the accountant in March 2013 setting out the notice and holiday pay figures for each alleged employee.

Ms McLoughlin said it was accepted that, subject to proof, redundancy payments are valid heads of claim and are to be assessed in accordance with the relevant statutory formula. However, no proof has that either the first or third claimants were employed by the Company and receiving wages has been provided, such as wage slips, documentation from HMRC or proof of National Insurance Contributions.

Conclusion

46. Ms McLoughlin's approach to the value of the business seems to me to be entirely appropriate and in accordance with established valuation principles, and I accept her conclusion. There was absolutely nothing from the claimants to support the alleged loss of profit or to dispute the Council's contentions. There was only a somewhat questionable Schedule regarding the alleged loss of value, and I am satisfied that the exercise undertaken by Ms Mcloughlin, assisted by suitably experienced colleagues, has provided an appropriate level of compensation under this head. Her suggested figure is accepted.

47. I agree that there is no evidence to support a claim for loss of stock, and likewise in the absence of proof that Mr Mustafa Behic or Mr Orhan Behic were employed by Mermer Ltd means I am unable to find for the claimants under these heads.

48. Finally, in connection with the second claimant, Ms Mcloughlin quite rightly and very fairly, in my view, pointed out that even though no claim was made under this head, under s.33C(2) and s.10 of the LCA 1973, the second claimant is entitled to an occupier's loss payment based upon the gross floor area of 4 Station Street multiplied by £25 per square metre or £2,500 whichever is the greater. This was calculated at £3,055 and I determine that this should be paid.

Third claimant

49. No claim relating to his business trading as "Bits & Bobs & The Phone Shop" was received in relation to Mr Orhan Behic. However, Ms McLoughlin, in her supplemental report, set out her opinions of the various heads of claim under which compensation could be payable in principle and which, had a claim been made, she would have recommended that compensation should be paid.

50. The third claimant held 4A Station Street under the terms of a lease from the first claimant for a term of 5 years from 25 March 2008 at an annual rental of £4,160 pa. This was not an arms-length transaction and, as at the valuation date, there was only just over 1 year remaining. In Ms McLoughlin's view, therefore, the leasehold interest was only of nominal value. However, on the same basis as calculated for the second claimant in respect of the Company's interest in 4 Station Street, Ms McLoughlin said that the third claimant was entitled to an occupier's loss payment of £2,500.

51. There had been no claim for loss of stock which had been left behind following possession and whilst it was inspected and catalogued by her colleagues, and that which was considered saleable was believed to have been sold at auction with the rest having been disposed of by the demolition contractors, Ms McLoughlin said she had no details of the figures achieved. With no claim and no evidence, it was her view that no compensation for what had in any event appeared to be of only nominal value was payable.

52. Finally, regarding loss on extinguishment of the business, again no claim had been forthcoming despite the third claimant having been advised as to the statutory position on many occasions. However, in the light of the fact that the business was seen from the accounts to have been profitable, Ms McLoughlin said it was resolved that the Mr Orhan Behic should be offered compensation of one year's profit - £3,478.

Conclusion

53. It seems to me from the above that the Council has been very fair in calculating that the third claimant should receive compensation in the total sum of £5,978 despite no claim having been made. I accept Ms McLoughlin's calculations.

Disposal

54. It is unfortunate that the claimants have chosen to distance themselves entirely from the process, particularly as they received the following advice provided on behalf of the Tribunal's Registrar in a letter dated 16 March 2016:

> "… the Registrar notes that you say you are not willing to participate in the proceedings currently before the Tribunal. He says that you cannot be forced to participate, but your failure to participate will not stop or invalidate the proceedings. They will continue without you and the Tribunal will determine whatever compensation you may be entitled

to based upon the evidence and arguments presented by Northumberland County Council alone. You will be bound by the Tribunal's decision whether or not you participate. He therefore urges you to think again and reconsider your decision."

In my view the claimants have not helped themselves by taking this stance – particularly in respect of such matters as the claim for redundancy pay where if they had chosen not to ignore the Council's requests for further proof, they would have been entitled to compensation under this head if such information had been forthcoming.

55. Compensation is determined as follows:

First claimant

Value of freehold interest	£150,000	
Claimant's time	£ 2,000	
Basic loss payment	£ 11,250	
		£163,250

Second claimant

Losses pursuant to total extinguishment – Mermer Ltd

Value of business	£ 15,000	
Loss on forced sale of equipment	£ 13,790	
Occupier's Loss Payment	£ 3,055	
		£ 31,845

Third claimant

Losses pursuant to total extinguishment – Bits & Bobs

Value of business	£ 3,478	
Occupier's loss payment	£ 2,500	
		£ 5,978
Total compensation payable to the claimants		£201,073

56. For the sake of record, it is noted that professional charges relating to the claimants' former advisers have been paid direct in the sum of £40,449.08.

57. This decision is final on all matters other than the costs of the reference. The parties may now make submissions on such costs, and a letter giving directions for the exchange of submissions accompanies this decision.

Dated: 23 June 2017

Paul Francis FRICS

ADDENDUM ON COSTS

58. Submissions on costs have now been received only from the acquiring authority, which seeks an order that the claimants bear their own costs in the reference, and to pay its costs incurred since 21 March 2017, the date upon which three unconditional offers were made. None of those offers, which were made pursuant to section 4 of the Land Compensation Act 1961 and copied to the Tribunal in sealed envelopes for opening only after the compensation had been determined and the question of costs was being considered, were exceeded in the determination dated 23 June 2017.

59. The offers were in the following terms:

(1) *First claimant (Mustafa Behic)*: £165,000 in full and final settlement (Tribunal's determination £163,250)

(1) *Second claimant (Mermer Ltd)*: £40,000 (Tribunal's determination £31,485)

(1) *Third claimant (Orhan Behic)*: £7,000 (Tribunal's determination £5,987)

Each of the offers also contained the following provisions:

"2. To pay the claimants' professional fees and expenses incurred in respect of the preparation and negotiation of the claim up to the date of the making of the Reference

3. To pay the claimants' professional fees and expenses incurred in respect of the Reference between the date of the making of the Reference and the date of this letter [21 March 2017]; and

4. To bear its own costs in respect of the Reference incurred up to the date on which the compensation is paid to you."

60. The offers were stated to remain open for acceptance until 4pm 5 April 2017 and it was made clear that that if they were not accepted by that date, condition 4 would cease to be a term of

the offer. Terms (1) to (3) would remain open subject to the claimants paying the acquiring authority's costs, fees and charges from the date of the offer.

61. It was submitted that there were no special reasons which the Tribunal could rely upon to depart from the general rule in section 4(1)(a) of the 1961 Act which provides:

> "4 – (1) Where either-
>
> (a) the acquiring authority have made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by the Upper Tribunal (Lands Chamber) to that claimant does not exceed the sum offered; or
>
> …
>
> The Upper Tribunal (Lands Chamber) shall, unless for special reasons it thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as they were incurred after the offer was made or, as the case may be, after the time when in the opinion of the Upper Tribunal (Lands Chamber) the notice should have been delivered."

62. The acquiring authority therefore sought a summary assessment of its costs by the Tribunal in accordance with a detailed statement and schedule of costs incurred since 21 March 2017 which was enclosed with the submissions. The costs, per its calculations, totalled £25,530.64 (net of VAT). Whilst I agree that in the circumstances the claimants must be liable for the acquiring authority's reasonable costs from that date, I am concerned that there were many mathematical errors in the documentation provided, some of which I found impossible to fathom, and I cannot therefore accept them as a reliable basis upon which make a fair determination.

63. For example, the acquiring authority's attendance costs were broken down into three sections: attendances on acquiring authority, attendances on claimants and attendances at hearing and amounted to 10.72 hours at £115 per hour which equates to £1,232.80. However, the sub-totals shown on the schedule add up to just £898.50. The totals column of the 'work done on documents' section produced a further £1,299.50, but the sub-total figures under each head bore no relation to the number of hours allegedly spent. The sub-total for all DWF's hourly costs was recorded as £2,418.50 which again bore no relation to the sub-totals produced under each head which I calculate at £2,198.

64. Further, the acquiring authority's in-house legal costs were claimed in the sum of £2,356.00 but the detailed breakdown amounted to just £1,411.60. Doing the best that I can on the information provided, my summary of the costs claim as made is:

DWF LLP Solicitors' costs & disbursements:		
Attendances on acquiring authority		£ 276.00
Attendances on claimants		£ 173.50
Attendances at hearing	£ 449.00	
Work done on documents		£1,299.50

			£ 2,198.00
Disbursements:			
(Counsel's fees)			
	Advice on documents/conference	£2,833.00	
	Fee for hearing	£5,000.00	
			£ 7,833.00
(Expert's fees)			
	Preparation for hearing and attendance	£7,505.85	
	Additional work re: 2nd claimant	£ 686.25	
			£ 8,192.10
(Other expenses)			
	Hearing fee	£4,021.26	
	Special/recorded deliveries	£ 130.70	
	Travel	£ 467.34	
	Misc. expenses	£ 121.00	
			£ 4,740.50
Total DWF			£22,963.60
Acquiring Authority's in-house costs			
Correspondence/telephone/documents/ travel and attendance at hearing.			£ 1,411.60
Grand Total			**£24,375.20**

65. As most the costs could not be readily ascribed or attributed to a particular claimant, it was suggested that the burden of costs (except the £686.25 expert's costs specifically relating to the second claimant that should be wholly charged to Mermer Ltd) should in fairness be apportioned between them in proportion to the amount of compensation awarded. I accept in principle that the division suggested is a sensible and proportionate resolution to the question of liability for costs. A further schedule was produced showing the intended distribution, but again that failed to attribute the specific expert's costs to the second claimant referred to above, and the calculations which were, of course, based upon the incorrect totals under each head did not in any event add up to the total of the individual figures sought.

66. Of much greater concern to me was the amounts claimed which in my view are overstated to a considerable degree and wholly out of proportion to the matters in hand. For instance, DWF has claimed hourly rates for work carried out by Grade A, Grade B, Grade C and Trainee Solicitors all in the same amount (£115 per hour) and as I have said none of the figures tally up. As to disbursements, I find counsel's fees of £5,000 for attendance at the hearing which, due to the claimants' failure to turn up, lasted no more than 40 minutes, to be excessive in the extreme. As to the claim of £7,505 relating to costs allegedly incurred by the valuation expert since 21

March, the schedule provided includes almost £5,000 under the headings of "preparation for hearing" and a further £607.50 for "review [of] RICS Practice Statement: Surveyors Acting as Expert Witnesses". This last item I find to be totally incredible. It is up to the expert to keep up to date and accord with the RICS requirements, and it is not a cost which can be recouped from the claimants. The additional preparation costs are in my judgment again excessive and unjustified. The expert's attendance costs at the hearing were not unreasonable in the amount claimed.

67. In the light of these comments, I determine that the costs to be awarded against the claimants shall be in the sum of £15,838.35 made up as to DWF attendance costs £2,000.00, DWF's other expenses (including the hearing fee) £4,740.50, counsel's fees £4,000.00, valuation expert's fees £3,686.25 (with the £686.25 being the extra costs applying only to the second claimant) and the acquiring authority's in-house legal costs at £1,411.60. The apportionment I calculate as follows:

Claimant 1:	£15,152.10 x 81.18% =	**£12,300.48**
Claimant 2:	£15,152.10 x 15.84% = £2,400.09	
	£686.25 x 100% £ 686.25	
		£ 3,086.34
Claimant 3	£15,152.10 x 2.98% =	**£ 451.53**
		£15,838.35

68. The costs as set out above, which are determined net of VAT (upon which no submissions have been received), shall be deducted from the compensation payable in accordance with the provisions of s.4(5) of the 1961 Act. The acquiring authority is invited to make submissions on the question of VAT within 7 days of the date of this addendum before this decision can be made final in all respects.

DATED 4 August 2017

P R Francis FRICS

SECOND ADDENDUM

68. No further submissions relating to VAT having been received within the allotted timescale, it is confirmed that this decision is now final in all respects.

Dated 29 August 2017

P R Francis FRICS