UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – preliminary issue – relocation of town centre livestock market – acquisition of shooting rights over land for use as site of new market – application of Pointe Gourde principle – whether a commercial developer would have taken the same steps but for the acquiring authority's scheme.

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**JOHN WARDLAW HANBURY-TENISON**	**Claimant**
	and	
	MONMOUTHSHIRE COUNTY COUNCIL	**Acquiring Authority**

Re: Shooting Rights at
High House Farm,
Raglan,
Monmouthshire

Before: Martin Rodger QC, Deputy President and Peter D McCrea FRICS

Sitting at 45 Bedford Square, London, WC1B 3AS
on
9-11 June 2014

Guy Roots QC, instructed by Clyde & Co LLP, for the claimant
Michael Humphries QC and *Richard Ground*, instructed by Eversheds, for the acquiring authority

The following cases are referred to in this decision:

Batchelor v Kent County Council (1989) 59 P&CR 357
Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment [2000] 2 AC 307
Gray (*Lady Fox's Executors) v Commissioners of Inland Revenue* [1994] 2 EGLR 185
Myers v Milton Keynes Development Corporation [1974] 1 WLR 696
Ossalinsky v Manchester Corporation (1883)(unreported)
Pentrehobyn Trustees v National Assembly for Wales [2003] RVR 140
Pointe Gourde Quarrying and Transport Co. Ltd v Sub-Intendent of Crown Lands [1947] AC 565
Transport for London v Spirerose Ltd [2009] 1 WLR 1797
Waters v Welsh Development Agency [2004] 1 WLR 1304

The following additional cases were referred to in argument:

Vyricherla Navayana Gatapatiraju (Raja) v Revenue Divisional Officer, Visagatapam [1939] AC 302
Lambe v Secretary of State for War [1955] 2 QB 612
Stokes v Corporation (1961) 13 P&CR 77
Wilson v Liverpool City Council [1971] 1 All ER 628
Trocette Property Co v Greater London Council (1974) 28 P&CR 408
Ward Construction (Medway) Ltd v Barclays Bank plc (1994) 68 P&CR 391
Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111
Kaufman v Gateshead Borough Council [2012] RVR 128

DECISION

1. The Monmouthshire County Council (Land at High House Farm, Raglan) Compulsory Purchase Order 2011 authorised the compulsory acquisition by Monmouthshire County Council of shooting rights over two fields at High House Farm, Raglan, Monmouthshire ("the reference land"). The CPO was made on 10 August 2011 and, following a public inquiry, was confirmed on 31 July 2012. A general vesting declaration was made on 30 January 2013, and the rights were vested in the Council on 1 March 2013.

2. The CPO was made to facilitate a scheme of redevelopment in the centre of the market town of Abergavenny in Monmouthshire. The scheme involved the demolition of the town's livestock market and the construction on its site of a new supermarket and a public library. In order to release the town centre site the scheme also involved the relocation of the livestock market to the reference land, where a new market opened on 17 December 2013.

3. By section 7(1) of the Compulsory Purchase (Vesting Declarations) Act 1981, the Land Compensation Act 1961 and the Compulsory Purchase Act 1965 apply as if notice to treat had been served under section 5 of the Compulsory Purchase Act 1965. By virtue of section 10(1) of the 1961 Act, the claimant is entitled to compensation as if the Council had taken possession of the shooting rights pursuant to section 11(1) of the Compulsory Purchase Act 1965.

4. The claimant claims compensation for (1) the value of the shooting rights acquired, (2) injurious affection caused to his retained land and (3) disturbance and other losses caused by the compulsory purchase of the rights. The parties are agreed that the rights must be valued under rule 2 of section 5 of the 1961 Act. Rule 2 refers to the value of "land", but section 39(1) of the 1961 Act defines "land" as including rights over land. The value of the rights is to be taken to be the amount which they might be expected to realise if sold on the open market by a willing seller. The valuation date for this purpose is agreed to be the vesting date, 1 March 2013.

5. On 15 April 2013 the claimant referred the issue of compensation to the Tribunal. He claimed £5,649,060.86 as the open market value of the rights, compensation for injurious affection and other sums. The Council's case is that the value of the rights is approximately £1,000 and the claimant does not suggest that their intrinsic value as shooting rights is significantly greater. The difference between the parties' rival assessments turns on the claimant's assertion that ownership of the rights has provided the key to the relocation of the livestock market from the town centre and the development of its former site for the supermarket, and that he is entitled to compensation which fully reflects the resulting premium value. The Council does not accept the claimant's assessment of the significance of the rights and additionally asserts that as a matter of law any premium value must be disregarded under the so-called *Pointe Gourde* principle, i.e. the principle that in valuing land compulsorily acquired it is necessary to disregard any increase or decrease in the value of the land wholly attributable to the scheme of the acquiring authority.

6. After exchanging statements of case, the parties agreed that it would be appropriate for the Tribunal to determine the following preliminary issue:

> "Whether any significant increase in the value of the rights acquired, above their intrinsic value as shooting rights, should be disregarded on the ground that such increase is attributable solely to the acquiring authority's scheme, which scheme is agreed between the parties to include both the construction of the new livestock market on the reference land and the redevelopment of the existing Abergavenny livestock market site."

7. Mr Guy Roots QC appeared for the claimant and called Mr Nicholas Eden FRICS MCIArb as an expert witness on valuation and development. Mr Michael Humphries QC and Mr Richard Ground of counsel appeared for the Council and called Mr Charles Russell-Smith BSc FRICS as an expert witness on valuation and development, and Mr George Ashworth BA(Hons) MRTPI as an expert witness on planning.

Facts

8. The parties produced a statement of agreed facts from which, together with the evidence, we find the following facts.

9. The Council has been the local authority (including the local planning authority) for the County of Monmouthshire since 1996. Prior to 1996 the local authority and local planning authority for Abergavenny was Monmouth Borough Council. The term "the Council" is used to refer to each authority as appropriate.

The rights over the reference land

10. By a Deed made on 28 November 1986 the claimant acquired a parcel of land comprising 3.65 acres at High House Farm, together with the following:

> *"... the right to stand a maximum of 8 guns over the two fields adjoining the first property being OS numbers 262 and 265 such right to be restricted to within 10 metres of the boundary between the first property and the fields OS numbers 262 and 265 where any further incursion might in the opinion of the first party detrimentally affect the use to which the said fields are or might be put and the exercise of such right is to be limited to 10 times in any one year and upon giving the first party at least 24 hours prior notice."*

11. The parcel of land acquired by the claimant was referred to in the Deed as "the first property"; the reference land comprises the two adjoining fields over which the rights were exercisable.

12. The reference land comprises about 10 acres of freehold land which was purchased by the Council, subject to the rights, at a public auction in July 2006. On the vesting of the rights on 1 March 2013 they merged with the Council's freehold interest in the reference land and were extinguished as a separate property right.

The livestock market

13. Abergavenny is an attractive market town in Monmouthshire. At the material time its town centre contained a range of multiple and independent traders but had no large supermarket. The town centre did, however, accommodate a livestock market.

14. The Abergavenny Improvement Acts 1854-1871 ("the Victorian Statutes") required that the Council (as the successor in title to the Abergavenny Commissioners) provide a livestock market within the "Town". The "Town", as defined by the Victorian Statutes, comprised a very small part of present day Abergavenny.

15. The freehold of the market site has been owned by the Council and its predecessors since the nineteenth century. The market itself was operated by Abergavenny and Newport Market Auctioneers Ltd ("AMAL") under a lease granted in 1988 for a term of 21 years, with an option to renew for a further term of 21 years from 2009.

16. Questions concerning the suitability of the market for modern livestock handling had been raised in the context of redevelopment proposals for the site as early as 1993. The outbreak of foot and mouth disease in 2001 increased doubts over the future of the facility as the prohibition of livestock movement caused the closure of the market for a year. These doubts multiplied as animal welfare and hygiene regulations tightened in the wake of the epidemic and, by 2012, the Council itself was making a positive case to the CPO inquiry that the livestock market was no longer fit for purpose and ought to be replaced.

17. In July 2002 the Meat and Livestock Commission ("MLC") reported on the feasibility of moving the market. Its report, which was jointly commissioned by the Council and the Welsh Development Agency ("the WDA"), concluded that while a case could be made for a continuing livestock market in Monmouthshire (if not Abergavenny) for at least the next ten years, there was uncertainty as to the scale of provision required in the future. The MLC report also estimated that expenditure of £441,000 would be required to upgrade the existing market to meet modern requirements and regulations.

18. By December 2002 fourteen potential sites for a new market had been identified to the Council by Newland Rennie Wilkins, a local agent. The Council's officers were asked by AMAL to focus on Raglan (approximately 10 miles south east of Abergavenny), rather than around Abergavenny itself, as their preferred location for a new market. Of the original fourteen sites, three sites at Raglan (Little Castle Farm, Cayo and Lodge Farm) were shortlisted and considered in greater detail by AMAL and the MLC. At a meeting in March 2003 the Lodge Farm site was identified by AMAL and the Council as the preferred option, and the other two sites were rejected due to planning, highway and landscape constraints.

The background to the compulsory purchase

19. For many years active interest had been shown in the livestock market site as a possible location for the provision of a supermarket for the town. In January 1993, an application was made by Black Mountain Investments Limited for planning permission for the demolition of the

market and its replacement with a food superstore of 47,000 sq ft gross, with a car park and offices.

20. Because of the significance of the livestock market to the local economy it was appreciated from the outset that a new site would also have to be found for a replacement market. Thus, in conjunction with its application to redevelop the market site, a separate application was submitted by Black Mountain Investments for a new livestock market at a site at Llanfoist, outside Abergavenny.

21. The town centre development was supported by the town council and the county council but not at that time by the planning authority which, before foot and mouth, did not agree with the assertion that the market was nearing the end of its economic life. We were told that the fate of the application for a new livestock market is not clear, but Black Mountain Investments' supermarket application was refused by the Council on 1 September 1993. Two of the three reasons for refusal related to the need to keep the livestock market.

22. At the same time the demand for a supermarket to serve Abergavenny gave rise to pressure for out-of-town development. On 24 March 1993, an application by Safeway for planning permission for a large out-of-town supermarket, also at Llanfoist, was granted on appeal. That permission was quashed following a challenge brought on behalf of Tesco but was granted for a second time in August 1995. The completed supermarket opened on 18 March 1997 and Safeway closed its Abergavenny town centre store a year later.

23. The Council was concerned to promote and defend Abergavenny as a retail centre and in May 1997 it adopted the Monmouth Borough Local Plan which extended the 'Central Shopping Area' in Abergavenny (i.e. the area deemed appropriate for retail use) ("CSA") to include the site of the livestock market for the first time.

24. The Council had instructed Drivers Jonas to prepare a retail study as part of its 'Three Towns Initiative' relating to Abergavenny, Monmouth and Chepstow, whose results were published in October 1997. The Drivers Jonas Report warned that the new Safeway at Llanfoist could attract trade out of Abergavenny town centre, advised that options to improve the retail offer in Abergavenny should be examined and suggested that the livestock market site was an obvious development opportunity.

25. The livestock market was not the only site considered for a new town centre supermarket. In March 2001 a voluntary community group, Abergavenny Development Forum ("ADF"), approached the Council with an alternative proposal for a site known as Brewery Yard, which was owned by the Council itself. After preliminary invitations to other food operators ADF reached an understanding with Waitrose and a proposal for a 20,000 sq ft food store was presented to the Council. A working group, comprising elected members and officers of the Council was set up to assess the practicalities of the proposed Brewery Yard scheme.

26. The Council continued to work on the Three Towns Initiative with the WDA and in October 2001 they jointly commissioned Colliers CRE to undertake a further retail capacity study, to establish the food retail floor space needed in Abergavenny town centre. The resulting report published in February 2002 ("the Colliers CRE report") concluded that there was capacity for a

new town centre food store of about 30,000 sq ft net sales area. It considered the Brewery Yard site, the livestock market site and two car park sites outside the Central Shopping Area as potential sites to accommodate the additional floor space.

27. The Colliers CRE Report concluded that the livestock market site was suitable in all respects to accommodate a supermarket of 30,000 sq ft and that the permanent loss of the market (which remained closed following the foot and mouth outbreak) would not significantly affect the viability of the town centre. The Brewery Yard site was considered unsuitable: displacement of the car parking and market stalls which it accommodated would represent a risk to the vitality of the town centre, and any store likely to be developed there would be too small to compete with Safeway at Llanfoist. Colliers CRE therefore recommended that the livestock market site be promoted as the site of a new supermarket.

28. A similar conclusion was reached by Macgregor Smith, architects, who were instructed to prepare a Regeneration Design Study for Abergavenny Town Centre in parallel with the Colliers CRE report. Their July 2002 report examined five potential locations and concluded that the livestock market was the optimum site for a quality food store of 30,000 sq ft.

29. The potential of the livestock market for an alternative retail use attracted attention from major supermarket operators. In 2002, the Council was approached by Raven Group (acting in partnership with Tesco) with a proposal to purchase and redevelop the site for supermarket use. Tesco had the benefit of an option with AMAL, the lessee and operator of the market, to purchase its leasehold interest in the site.

30. The Council was aware of Tesco's relationship with AMAL but nonetheless on 29 April 2003 its Cabinet resolved to refuse the Raven Group approach on the basis of external valuation advice that the terms of the proposal were less favourable than could be achieved in the open market. The Council's Cabinet resolved instead that the Council should pursue its own scheme for the relocation of the livestock market elsewhere in its district to ensure that the delivery of a food store on the existing site would be controlled by the Council, rather than by third parties or by AMAL. It was recognised that this may require the use of compulsory purchase powers to acquire AMAL's interest under its lease. The Council was warned by its officers that a critical moment had been reached and that the allocation of the town centre site for a quality food store was essential if it wished to fight off an imminent application by Johnsey Estates for a major development at Llanfoist including a 35,000 sq ft food store as well as non-food and leisure uses. Officers considered that such a scheme would cause substantial damage to the viability of Abergavenny town centre but warned that, without a town centre alternative, the Council would be powerless to resist the proposal as it had publicly stated on the basis of external advice that the town required a new food store. As Mr Ashworth explained in his oral evidence, "enormous pressure" was felt by the Council's officers who feared that, unless a viable town centre scheme could be demonstrated, the Council's own published material would be used against it by a developer promoting an out of town site.

31. It is common ground that the Cabinet resolution of 29 April 2003 by which the Council decided to embark on its own project for the redevelopment of the livestock market site marks the inception of the scheme which is required to be disregarded for the purpose of determining the claimant's entitlement to compensation for the compulsory acquisition of his shooting rights.

The Council's scheme

32. In April 2004, as local planning authority the Council resolved to grant permission (on its own application as landowner) for the redevelopment of the livestock market site as a supermarket. However, the decision notice was not issued, and thus planning permission was not in fact granted, apparently because of uncertainty over the Council's capacity to enter into a section 106 agreement.

33. Following marketing and a tender process Henry Boot PLC was appointed by the Council as its preferred developer of the site in September 2004 with contracts being exchanged between them in July 2005.

34. In June 2006, the Council adopted the Monmouthshire Unitary Development Plan (UDP). The livestock market site remained within the CSA. The policies recorded in the UDP favoured new or improved retail provision in the CSA. Supplementary Planning Guidance published by the Council recorded that the need to strengthen Abergavenny as a shopping destination had been a key objective of the Council for many years, and that the livestock market site was the preferred location for a new supermarket.

35. The Council terminated its agreement with Henry Boot in August 2009 following the withdrawal of the intended anchor tenant, ASDA, in the wake of a succession of planning problems, including a refusal of planning permission for the redevelopment of the market site in January 2007. The Council resolved instead to re-market the site for a supermarket development while retaining an area of land for the provision of a library. Following marketing, Morrison's, acting through its group company, Optimisation Developments Limited (ODL), was appointed as the preferred developer and contracts were exchanged in July 2010.

36. In tandem with its promotion of the livestock market site the Council actively sought an out-of-town location to which the market could be moved. Three sites were considered (the reference land, Little Castle Farm and Llanfoist) and in all three cases resolutions to grant planning permission for a replacement market were approved by the Council.

37. In July 2004, the Council resolved to acquire land at Llanfoist and an application for planning permission for a scheme which included a new cattle market was submitted by a commercial developer in the same year. Permission for the proposed scheme was granted in May 2007. Although there were access problems with the site, these were not regarded by Mr Ashworth as insuperable. Nonetheless, by the time planning permission was granted the Council's interest in the Llanfoist site had already cooled in favour of an alternative strategy of closer collaboration with AMAL and farming representatives. On 25 July 2005 the Council entered into a new arrangement with AMAL ("the New Market Agreement") by which AMAL undertook to find a replacement site, to construct a new livestock market and to operate it.

38. After its decision not to pursue the Llanfoist site the Council next entered into an option agreement to acquire land of about 3 hectares at Little Castle Farm, Raglan which was partly occupied by a complex of poultry units and other buildings. AMAL then applied for planning permission for the construction there of a new market at the Little Castle Farm site and the Council resolved in September 2006 subject to conditions to grant permission. It was common

ground that development at the site would have been difficult due to planning and environmental issues. The extent of these obstacles was not explored in detail in the evidence, although Mr Ashworth told us that by mid-2006 the project was very well advanced and that he had been confident of overcoming the drainage problems in consultation with the Environment Agency. What does seem to be clear from Mr Ashworth's evidence, which we accept on this issue, is that the proposals for Little Castle Farm were overtaken by the Council's acquisition of the reference land. The resolution to grant planning permission was not translated into a formal decision notice because, when the Council decided to participate in the auction for the reference land, Mr Ashworth had not wanted there to be two permissions for livestock markets on different sites within three kilometres of each other, so (after consulting AMAL) he had delayed signing the decision notice. For a time the two sites had progressed side by side but by April 2007 the Council's attention was focussed on the reference land and, in response, the owners of Little Castle Farm promoted an alternative development of light industrial units. Planning permission was granted on their application in May 2009 and the light industrial units had been constructed by December 2011.

39. The Council acquired the reference land for £143,000, subject to the rights and along with adjacent land, at public auction on 11 July 2006. The purchase was an opportunistic one, prompted by the availability of the reference land rather than by its prior identification as a suitable site for the relocation of the livestock market. The reference land had not been one of the fourteen sites considered by the MLC when it reported in 2002 nor had it been assessed by the Council in conjunction with AMAL. Nonetheless, when the opportunity to acquire the reference land arose the Council took it.

40. In April 2007 AMAL made an application for planning permission for construction of the new livestock market on the reference land. Planning permission was granted on 16 January 2008 but the claimant sought judicial review of the Council's decision to grant and on 20 October 2008 the decision was quashed by consent. AMAL's planning application was returned to the Council for redetermination and on 15 July 2009 permission was granted once again ("the 2009 Permission"). Although proceedings for judicial review of the 2009 Permission were commenced, they were withdrawn by consent in July 2010.

41. On 14 May 2010 AMAL agreed to surrender the 1988 lease of the livestock market site and on the same day it was granted a new three year lease by the Council. The new lease was subsequently extended and expired on 31 December 2013 after the opening of the new market. For its part the Council agreed to procure that the development of the new livestock market on the reference land would be carried out. The Council's obligation was conditional on the extinguishment of the rights, the repeal or amendment of the Victorian Statutes to relieve the Council of its obligation to provide a livestock market within the historic boundaries of the town and the satisfactory disposal of the judicial review proceedings against the 15 July 2009 planning permission. AMAL was to be granted a lease of the new livestock market on the reference land or, if the Council preferred, on an alternative site, following practical completion.

42. On 7 November 2011, planning permission was granted to ODL for the demolition of the livestock market and the construction of a supermarket and new library on the town centre site. By a section 106 agreement entered into on the same day, ODL covenanted not to commence development until the Council had provided written confirmation that, as the local planning authority, it was satisfied that there was reasonable livestock market provision "in the region".

43. The Council regarded the relocation of the livestock market as important to the local economy, but it was also under an obligation, imposed by the Victorian Statutes, to provide a market within the historic boundaries of the town. As part of its strategy for the town centre the Council petitioned the National Assembly of Wales to repeal the Victorian Statutes, but it was opposed by farming unions who wished to ensure that the market was relocated at an alternative site. In 2006 the Assembly decided not to repeal the Victorian Statutes until planning permission had been granted for the redevelopment of the existing livestock market.

44. On 26 March 2012, the Council entered into a deed ('the Memorandum of Understanding") with the National Farmers Union Cymru, and the Farmers Union of Wales by which, in consideration of the unions withdrawing their objections to the repeal of the Victorian Statutes, the Council undertook to provide an alternative livestock market within the administrative boundaries of the Council for no less than 50 years from the date of the Memorandum of Understanding and thereafter for such period as it continues to be economically viable in the reasonable opinion of the parties to the Memorandum of Understanding. The Council further undertook to continue the existing livestock market until the replacement had been provided.

45. The Memorandum of Understanding cleared the way for the repeal of the Victorian Statutes and, following public consultation, the Abergavenny Improvement Act 1854 (Repeal) Order 2012 ("the Repeal Order") came into force on 26 March 2012. The Repeal Order was challenged in the High Court but the application for judicial review was dismissed on 8 November 2012.

The compulsory purchase

46. The CPO was made on 10 August 2011 and, following objections from the claimant and others, a public inquiry was held over four days in January 2012.

47. The Inspector appointed to hold the inquiry recommended that the CPO be confirmed with the modifications put forward by the Council. His report dated 29 February 2012 included a consideration of the availability of alternative sites for the relocation of the livestock market. The following conclusions were particularly drawn to our attention:

> *"168. In this case, the Council has considered various alternative sites and has even progressed the adoption of 2 other sites at some length before concluding they were unsuitable for some reason. It is acknowledged that the Order land is probably not the only suitable land for the new market. However, the Council says it is not aware of any other suitable and available site. Several other sites have been suggested by objectors. However, with the exception of the main objector's own land at Mamhilad (see below), no convincing evidence has been put forward to indicate they would be available and suitable. …*
>
> *169. Mr Hanbury-Tenison has recently put forward his own site (in neighbouring Torfaen Council area) and has applied for planning permission for a livestock market at Mamhilad, about 8 miles to the south of Abergavenny. The Council has expressed the opinion that the site is unsuitable and unlikely to be granted planning permission. However, that is not a matter for consideration here. What is clear is that the proposal does not (yet) have planning permission and so is subject to an impediment. …*
>
> *170. I conclude the Council has demonstrated that other possible sites have been considered but that no suitable and available alternative within the County is known. Mr Hanbury-*

Tenison's Mamhilad site is outside the County and outside the Council's powers to relocate the livestock market. It is also not as well located as the Order land site to service its market catchment. Although the Council's search for a new market site could have been carried out in a more structured way, I conclude it has shown a reasonable consideration of several alternatives sufficient to justify the Compulsory Purchase Order."

48. As is apparent from these passages the claimant had proposed land in his ownership at Mamhilad as an alternative livestock market site. Planning permission was subsequently granted for this site by Torfaen District Council (the relevant planning authority).

49. In accordance with the recommendations of the Inspector in a report dated 29 February 2012 the CPO was confirmed by the Welsh Minister for the Environment and Sustainable Development on 31 July 2012. As modified, no land or rights were included in the property acquired, other than the shooting rights over the reference land.

50. On 30 January 2013, the Council executed the general vesting declaration which vested the rights in it on 1st March 2013.

Expert evidence

51. The claimant invited the Tribunal to make further findings of fact on what would have happened had the Council behaved differently and, specifically, what would have happened if the Council had not acquired and had not proposed to acquire the reference land and the shooting rights. We were asked to determine whether, in those circumstances, it was likely that the reference land would nonetheless have been developed for a livestock market and the existing market site for a supermarket.

52. To assist us in considering these counter factual issues the claimant relied on the evidence of Mr Eden, and the Council relied on the evidence of Mr Ashworth and Mr Russell-Smith.

Mr Eden's evidence

53. Mr Eden is a Chartered Surveyor and a Member of the Chartered Institute of Arbitrators. He is the senior partner of Kinney Green and has over 40 years' experience mostly in commercial property based in London but including, at the start of his career, in livestock auctioneering. Mr Eden's instructions were to express his opinion on two questions:

1. On the likelihood that development of the reference land as a new livestock market and development of the existing town centre market site for retail purposes would have been carried out if the Council had not acquired and did not propose to acquire the reference land?

2. Assuming that the rights had a premium value related to their ability to unlock the development potential of both the reference land as a new livestock market and of the town centre site for retail purposes, whether that premium value would have existed if the Council had not itself actively promoted those developments?

54. Mr Eden was not asked to ascribe a specific value to the rights, but was required to assume that they had a premium value. The preliminary issue proceeded on that assumption in order to establish whether any such premium value was required to be disregarded under the *Pointe Gourde* principle.

55. Mr Eden considered what would have been likely to happen after 29 April 2003 (the date of the Cabinet resolution) had the Council not promoted the redevelopment of the existing livestock market and the development of a new livestock market at another location. His basic thesis was that the relocation of the livestock market from the town centre site was the key to unlocking its development potential and that, had the Council not chosen to promote its own scheme, a supermarket operator or developer would have made a proposal to facilitate that relocation. By 2003 the considerable commercial opportunity that the livestock market presented was obvious and Tesco, Waitrose, ASDA and Morrison's had all expressed interest in it. Supermarket operators or developers would also have observed from published documents that the need for a town centre supermarket development had been established.

56. For the Council, as landowner and planning authority, the structural and financial attractions of a redevelopment of the town centre site would have been apparent. If it could be demonstrated that retail need was adequately met by a town centre site, edge-of-centre and out-of-centre alternatives would not need to be considered. Where there was only one suitable town centre site, as at Abergavenny, supermarket operators would pay substantial sums, as Tesco's rejected 2002 offer to redevelop the market indicated.

57. There would have been no expectation that planning policy would be problematic – there was strong planning policy support for such a redevelopment. The only significant obstacle to planning permission for a supermarket on the existing site would be the relocation of the livestock market, to which a developer would not expect significant opposition in principle.

58. If alternatives had been readily available, a developer might have looked to a site which did not require such obstacles to be overcome but in this case there was little likelihood of finding another site in the foreseeable future. There was a window of opportunity to promote a supermarket in the town centre but delay would pose a real risk of planning permission being granted for an edge or out-of-centre development instead, which would destroy the commercial opportunity to provide a supermarket in the town centre.

59. Mr Eden considered that it was therefore likely that a developer or operator would have negotiated a suitable arrangement with the Council in its capacity as the freehold owner of the existing livestock market site. Indeed, this occurred with Henry Boot in 2004 and again with ODL in 2010.

60. Mr Eden felt sure that had the Council not taken the lead in April 2003, a supermarket operator or a developer would have searched for a solution to the relocation of the market to enable a supermarket development to proceed. The option agreement entered into between AMAL and Tesco for the acquisition of the lease of the market would have given Tesco an advantage but it would still have required the cooperation of the Council as landowner. If the Council had reached agreement with Tesco, the supermarket operator would have been more than capable of finding a suitable replacement livestock market site. There would be nothing

unusual in a developer entering into an agreement to purchase or lease the town centre site, conditional on a replacement site for the livestock market being found. Similar arrangements had been entered into by Tesco at Newtown and at Welshpool and comparable moves were under discussion at Molton and at Louth. The phenomenon of supermarkets replacing other town centre uses was neither new nor limited to livestock markets. For example, Yeovil FC had been relocated by Tesco and supermarket schemes were under discussion at Aberystwyth and Dorking.

61. A developer trying to find a site upon which to relocate the livestock market would have referred to the same published criteria as had formed the basis of Mr Ashworth's evidence to the CPO inquiry in 2012. When the reference land was offered for sale by auction in 2006 a developer then looking for a suitable site would have recognised that it met all of the relevant geographical criteria, it adjoined an existing commercial garden centre with a large car park, had a good road frontage and was not in a wholly rural setting. Ideally, a developer would have preferred an option agreement, but the sum involved to buy the reference land at public auction would have been its comparatively modest agricultural value (a similar amount to that paid in reality by the Council) and if the project for redevelopment of the town centre site and relocation of the livestock market came to nothing it could be resold without a significant loss. Mr Eden therefore considered it very likely that in the absence of the acquiring authority bidding at the auction – an absence he had to assume – a developer or supermarket operator would have succeeded in acquiring it.

62. The need also to acquire the rights would not have been considered insurmountable nor would the prospect of having to pay more for them than their intrinsic value as shooting rights because of their ability to unlock the development value of the town centre site. In Mr Eden's opinion a ransom value would not render the development unviable.

63. As for alternative sites, AMAL had identified the Little Castle Farm site, and the Council took an option over it. Had it not been for the Council's scheme a developer may also have found the same site although its unsuitability would equally have applied to them as to the Council.

64. Mr Eden also saw no reason why the Victorian Statutes would not have been repealed by the Welsh Assembly even if the request had come from a developer or supermarket operator rather than from the Council itself.

65. Mr Eden made it clear in cross-examination that he had assumed that the various events which had in fact occurred would have occurred in a similar sequence even without the active participation of the Council. There would have been a tendering exercise for the town centre site which would have resulted in an agreement between a developer and the Council conditional on the relocation of the market. He considered that a private developer would have undertaken a similar assessment of potential alterative market sites, but he assumed that no suitable site would have been progressed by the time the reference land became available in 2006. At that point the reference land would have been identified as suitable and acquired by a developer. The last step would be the acquisition of the rights by agreement to enable the development to proceed.

66. In summary, Mr Eden considered that the likelihood of development of the reference land as a new livestock market and the town centre market site for retail purposes would have been very high even in the absence of active participation by the Council. By 2003 there was strong demand for a supermarket in the town centre, and that the existing livestock market was the only feasible site to meet that need. The market required major renewal which could only have been achieved by relocation. The reference land met the locational criteria, became publicly available for sale and was in reality the only available site potentially suitable for use as a replacement livestock market. There would have been pressure of time and the fear that a supermarket operator could and would have secured an out-of-town site for supermarket use. Mr Eden had no doubt that a developer or supermarket operator could and would have brought the reference land forward as a replacement market site so as to enable it to redevelop the town centre site.

67. Mr Eden considered that in all of those circumstances the rights would have had a premium value related to their ability to unlock the development potential of both the reference land and the town centre site. He had not been asked to quantify that premium value, but it would have existed had the Council not itself proposed or actively promoted the developments.

Mr Ashworth's evidence

68. Mr Ashworth is a Chartered Town Planner with 35 years' experience in local authorities. He is the Head of Planning, Place and Enterprise in the Enterprise Directorate of the Council, and has been the lead officer for the town centre redevelopment and relocation of the market since 1996. Despite his close involvement with the Council's project, he refuted Mr Roots' suggestion that he lacked independence and objectivity.

69. Mr Ashworth had considered whether there were alternatives to the reference land which could have been brought forward as potential sites for the relocation of the livestock market. The Council had resolved to grant planning permission for Little Castle Farm in 2006 and permission had been granted at Llanfoist in May 2007. By the time the application for the reference land was considered for the second time in July 2009 (the first favourable decision having been quashed) neither of these sites remained available. The discussion in the committee report showed that the planning authority understood that there may have been better sites available. During the CPO inquiry, the inspector had noted that the claimant had recently submitted a planning application to Torfaen CBC for the development of a livestock market on allocated land in his ownership, which would prove an acceptable alternative to the reference land. Neither the planning nor the CPO processes had stipulated that the reference land was the only potentially suitable site for the replacement livestock market, and Mr Ashworth noted that the section 106 agreement for the Morrison's scheme was not tied to the reference land and was conditional only on there being "reasonable cattle market provision in the region" prior to the commencement of the supermarket development.

70. Mr Ashworth's evidence to the CPO inquiry had been that it was unlikely that sites as satisfactory as the reference land were readily available for the proposed new livestock market, and he defended that assessment under cross examination. The existence of potential alternative sites had been acknowledged by him but, from his experience in advising on possibilities in Monmouthshire (at Cayo Farm, Little Castle Farm and Llanfoist) the

identification of realistic potential alternatives was far from straightforward and the availability of potential sites was quite limited. Given that demand was likely to be insufficient to justify more than one market, he said that he had considered it important to avoid unnecessary delay by the further investigation of alternative schemes, as this might jeopardise the implementation of the planning consent on the reference land. His major concern had been to protect Abergavenny from the threat of edge of town supermarket proposals which would damage the viability and vitality of the town centre.

71. The CPO Inquiry inspector had accepted that the reference land was probably not the only suitable land for the new market, but, with the exception of the claimant's own land, had found no convincing evidence to indicate that alternatives would be both available and suitable.

72. Mr Ashworth pointed out that the Council had purchased the reference land only after it had come onto the open market, and that it had done nothing to elicit nominations of alternative sites. He considered that a developer of a superstore would have taken a more proactive approach to canvassing for alternative sites. A developer expressing an interest in purchasing accessible and relatively unconstrained freehold land in the vicinity of Raglan would have been likely to be successful in identifying other land which would be suitable for a replacement livestock market in planning terms. Had such a developer been considering the suitability of the reference land it was likely to have become aware of the vehement opposition of the claimant to the proposals for the relocation of the livestock market.

73. Mr Ashworth took issue with Mr Eden's suggestion that there were no other sites available, unless the criterion being used was simply the land that was actually being advertised at the same time. If the criterion was land which might be acceptable in planning terms, the assertion was incorrect. Mr Ashworth emphasised the breadth of the area which might provide a suitable alternative site. He identified a triangle of land between Coed Morgan, Dingestow, and Berllan Deri, and centred on Raglan, which was unconstrained by the Special Landscape Area that surrounded it, and relatively unconstrained by the flood plain. Even allowing for Conservation Areas, Scheduled Ancient Monuments and statutory Nature Conservation Sites, there were still extensive unconstrained areas. The whole of the triangle was accessible from the trunk road network. Whilst Mr Ashworth had not identified individual sites as being capable of accommodating a new livestock market, such agriculturally-related development could be acceptable over much of this area.

74. Mr Ashworth also considered that the successful development of the town centre site for a supermarket was not a foregone conclusion. He considered that the site was vulnerable to competition from new town centre stores and from edge of town supermarket proposals. In March 2013 Johnsey Estates' application for a supermarket at Llanfoist (anticipated at the time of the Cabinet resolution of 29 April 2003) was still live, although it was subsequently withdrawn. Mr Ashworth drew attention to a planning and retail assessment prepared by King Sturge in May 2010 which supported the Johnsey proposal. King Sturge considered the difficulties of accommodating a supermarket in the town centre including the Victorian Statutes, proximity to the conservation area, traffic issues and the threat of judicial review and said that "it is not possible to conclude that there is a reasonable likelihood that the development will be implemented" and that "in reality, the cattle market is unlikely to come forward for a food store development within the short to medium term".

75. Although by the valuation date the Victorian Statutes had been repealed and the threats of judicial review had been lifted, other issues including junction improvements had not been finalised and the deliverability of the cattle market site remained in doubt. The concerns identified by King Sturge were consistent with the recent history of the site and the planning problems which had caused ASDA to withdraw its interest in 2009.

76. Mr Ashworth concluded that a developer would have been concerned that delay and out-of-centre competition were real threats to the deliverability of the town centre site and furthermore would not have accepted that the reference land was the only available replacement market site. Such developers were very price sensitive and would not have been prepared to pay a ransom value for the rights. It was unlikely, he said, that a private sector developer with a project for the town centre site would have "stayed the course" in the way the Council eventually did.

Mr Russell-Smith

77. Mr Russell-Smith is a Chartered Surveyor and an equity partner of Alder King LLP. He has 33 years' experience in the commercial property market, predominantly in the retail property sector, and for the last 20 years has specialised in retail development and food stores. He has provided development consultancy and agency advice to the Council in relation to the livestock market since 2004.

78. Mr Russell-Smith drew attention to the long list of assumptions on which Mr Eden's approach depended to establish that by the valuation date, even without the Council's interest, the rights would have a premium value. It was fundamental to that approach that by 1 March 2013 a developer or supermarket operator, and other parties, would have surmounted the obstacles which were in reality surmounted by the Council. These included negotiating a suitable arrangement with the Council in its capacity as freehold owner of the livestock market; reaching agreement with AMAL to acquire the market lease; negotiating with two farm supply businesses who had leasehold units in the market and who agreed to relocate only under threat of compulsory acquisition; acquiring the freehold interest in the reference land; finding no suitable alternative site for the new livestock market available without substantial delay; and securing the repeal of the Victorian Statutes.

79. No purchaser had in fact done any of these things, including land assembly on two sites. It was nonetheless assumed by the claimant that in a no-scheme world a hypothetical purchaser without compulsory purchase powers would have acted in such a way as to make the purchase of the rights the key to the redevelopment of the town centre site. Mr Eden's rewriting of history had the improbable effect of enhancing the value of the rights by the valuation date by creating a ransom situation in which the hypothetical purchaser would be prepared to pay a premium price for rights which would otherwise have had only a nominal value.

80. Mr Russell-Smith contrasted this hypothesis with a typical ransom situation. In reality no developer or supermarket operator would allow itself to be put into the position Mr Eden assumed the hypothetical purchaser to be in by the valuation date. In his experience developers were risk and cost averse; they would not incur significant expenditure on a speculative basis but would rather seek to employ conditional contracts or options to avoid a ransom situation

arising. They would progress their interest on a sequential basis and on completion of each step would reassess both the viability and deliverability of the development. The Council had undertaken the various steps it had with the reassurance that it had powers of compulsory purchase, and in the knowledge that it would not find itself ransomed by the owner of the final piece in a complex jigsaw.

81. The development of town centre sites was a complex, lengthy and costly exercise, typically taking ten years or more to come to fruition. As for Mr Eden's examples of town centre redevelopments proceeding in the face of comparable obstacles, Mr Russell-Smith suggested that only one livestock market, at Welshpool, had actually been relocated. In Newtown, the market had already closed when the site was offered to the open market; in Malton, the proposed redevelopment was being promoted by the landowner who was also understood to own the proposed relocation site; in Yeovil, the relocation was undertaken by developers who had previously purchased the relocation site; and four of the other developments cited had no timescale for delivery and uncertainty as to whether they would proceed. Mr Russell-Smith had direct experience of the South Molton site, where the relocation of the livestock market was first proposed in the late 1990s. Despite the local authority owning the site and being supportive, no redevelopment had yet taken place 14 years later. The Yeovil livestock market, which closed in June 2008, was in a prominent location adjacent to the town's main shopping area. Despite developer interest and a supportive planning framework, the site remained vacant with no current development proposals.

82. Mr Russell-Smith considered that at the valuation date, bearing in mind the other unresolved matters, the hypothetical purchaser would not make a significant bid above the intrinsic value of the rights. A developer whose development appraisal included a ransom price for acquiring an alternative site for the market would have been outbid in the tendering process which would have been required prior to any agreement with the Council, as owner of the town centre site. The greater likelihood was that in the 10 years between the Council's decision in 2003 and the assumed acquisition of the rights in an open market transaction on 1 March 2013, matters would have evolved in such a way that the planning permission for the reference land would have become irrelevant. Either an out of town supermarket development would have obtained consent, or an alternative site for a livestock market would have progressed, but by the valuation date it was unlikely that there would have been a private sector supermarket developer in the market for the rights as the last key to a scheme which looked like the Council's own scheme.

83. Mr Russell-Smith also questioned the willingness of a private developer to give the sort of undertaking which had been required to secure the cooperation of the NFU and FUW for the repeal of the Victorian Statutes. No developer would give a commitment to keep a livestock market running for 50 years, or pay a local authority to assume the same obligation, yet the Memorandum of Understanding which the Council had entered into with the farming interests had been fundamental to freeing the Council from its obligations. Once the difficulties presented by the Victorian Statutes had been appreciated, any developer would have looked for an alternative site, out of town, in preference to the market site.

84. In his cross-examination of Mr Russell-Smith, Mr Roots suggested that if the rights were worth only £1,000 the value of the town centre site would have been unlocked for only £144,000 (including the £143,000 paid for the reference land and other land by the Council at

auction). He referred to an offer of £210,000 per acre for part of the Llanfoist site which Mr Russell-Smith had made on behalf of the Council in November 2004 with a view to relocating the market. Mr Russell-Smith could not remember the details, but recollected that Johnsey Estates had an alternative proposal for employment uses for the land and the offer made by Mr Russell-Smith had to be competitive with that alternative use value.

Legal principles

85. The fundamental question for the purpose of the preliminary issue is whether the *Pointe Gourde* principle, when correctly applied to the facts of the case, requires that the assumed premium value of the shooting rights be disregarded.

86. The Privy Council's decision in *Pointe Gourde Quarrying and Transport Co. Ltd v Sub-Intendent of Crown Lands* [1947] AC 565 concerned the compulsory acquisition by the Crown of a quarry in Trinidad to secure a supply of stone for use in the construction of a naval base on other land (which was not the subject of the acquisition). The Trinidadian tribunal had assessed the compensation payable at $101,000, which included $15,000 to reflect an anticipated increase in profits related to the opportunity for the quarry to supply stone for the building of the proposed naval base. The Privy Council held that the additional $15,000 was not precluded by the Trinidadian compensation Ordinance (which mirrored section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919) but that nonetheless this part of the assessment was contrary to principle because, as Lord MacDermott stated, it was "well settled that compensation for the compulsory purchaser of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition".

87. As reflected in the terms of the preliminary issue, it is common ground that the scheme underlying the Council's acquisition of the rights includes both the relocation of the livestock market to the reference land and the redevelopment of the town centre site as a library and superstore. The parties agree that any increase in the value of the rights entirely due to that scheme is to be disregarded.

88. In *Transport for London v Spirerose Ltd* [2009] 1 WLR 1797 Lord Walker observed (at [12]) that the *Pointe Gourde* principle is essentially concerned with statutory construction and with "the general attitude and expectation with which the court should approach a statute dealing with compensation". Lord Collins described it (at [128]) as "a principle of statutory interpretation, mainly designed and used to explain and amplify the expression "value"". The other members of the House of Lords agreed and it is therefore necessary to consider the earlier authorities on which the parties rely in this case in the light of that definitive guidance. As the speeches in *Spirerose* emphasise, compensation for compulsory purchase is a creature of statute; the *Pointe Gourde* principle can properly be relied on in interpreting the compensation code but does not provide an extra-statutory appendix to it and cannot be applied to add to, or contradict, the assumptions laid down by Parliament.

89. The "value" of the rights referred to in Rule 2 is their value to the claimant as owner, and not their value to the Council. It is for that reason that any enhancement in value which is entirely due to the scheme underlying the Council's acquisition of the rights must be disregarded. Nonetheless that principle does not require that the value of the rights be

restricted to their intrinsic value as shooting rights, if circumstances other than the Council's scheme invest them with additional value, even a ransom value. In ascertaining the value of any land (or rights over land) the potential to develop the land for some other use is obviously relevant; as Lord Collins put it in *Spirerose* (at [95]) "it is elementary that the price which the land in question might reasonably be expected to fetch on the open market at the valuation date would be expected to reflect whatever development potential the land has". On the valuation date in this case planning permission already existed for the development of the reference land as a livestock market which had been granted on 15 July 2009. It is common ground that there is no rule of law which prevents that planning permission from being taken into account in determining the value of the rights, notwithstanding that it was granted on an application by the Council in the furtherance of its scheme. Section 14(2) of the 1961 Act makes it clear that any assumptions which fall to be made about planning permission in accordance with section 15 and 16 are in addition to any planning permission which may be in force.

90. If the enhanced value of the land due to its potential for some alternative more valuable use is not attributable solely to the scheme of the acquiring authority, but would have existed even in the absence of the scheme, there is no reason for the enhancement to be left out of account. In *Waters v Welsh Development Agency* [2004] 1 WLR 1304 Lord Nicholls referred to *Countess of Ossalinsky v Manchester Corporation* (1883), reported under the heading "special adaptability" in an appendix to Browne and Allan's Law of Compensation (2nd ed, 1903), p 659, as an example of this approach. Land in the Lake District had been acquired for use as a reservoir to supply water to Manchester. The land was suitable for that purpose and the prospect that it would be likely to be developed as a reservoir was a matter which might enhance its value. It was held that the specific scheme should be disregarded, but that the owner should be compensated taking into account the potential of the land to be used as a reservoir:

> "That should be taken into account. The particular purpose to which the Manchester Corporation was going to put the land should not be taken into account. But the fact of the acquisition of the land for this particular purpose might have evidential value showing that suggested alternative reservoir development schemes 'are not visionary, but are schemes with a certain probability in them': see Grove J at page 662."

91. A more modern example of this aspect of the value to the owner principle is *Batchelor v Kent County Council* (1989) 59 P&CR 357 which was approved by Lord Nicholls in *Waters* (at [65]). A plot of land had been acquired by a highway authority to construct a roundabout in connection with the residential development of a site near Maidstone. It had been found by the Lands Tribunal that before the scheme for the acquisition of the land had been conceived, the claimant's plot had had an enhanced value due to the grant of planning permission for residential development on adjoining land. The Court of Appeal held that it was legitimate for that pre-existent premium value to be taken into account. At p. 361 Mann LJ said that there was no difficulty with the relationship between the *Pointe Gourde* principle and a premium or "ransom" value:

> "If a premium value is "entirely due to the scheme underlying the acquisition" it then must be disregarded. If it was pre-existent to the acquisition it must in my judgment be regarded. To ignore the pre-existent value would be to expropriate it without compensation and would be to contravene the fundamental principle of equivalence …"

92. In arriving at the value to the owner for the purpose of Rule 2 it is therefore necessary to distinguish between value attributable to the Council's scheme for the redevelopment of the reference land and of the town centre site, and value which already existed and would therefore have continued to exist but for the Council's scheme. It is only the latter value which is relevant for the assessment of compensation.

93. In *Waters* Lord Nicholls explained what was to be disregarded (at [21]):

> "Drawing a distinction between value to the owner and value to the purchaser makes it necessary to distinguish the one from the other. It is necessary to separate from the market value of land any enhancement in value attributable solely to the presence of the acquiring authority in the market as a purchaser of the land in exercise of its statutory powers. It is important to recognise that, for this purpose, it is not the existence of a power of compulsory acquisition which increases the value of land. What is relevant, because this may affect the value of the land, is the use the acquiring authority proposes to make of the land it is acquiring. Accordingly, in identifying any enhanced value which must be disregarded it is always necessary to look beyond the mere existence of the power of compulsory purchase. It is necessary to identify the use proposed to be made of the land under the scheme for which the land is being taken. Hence the introduction of the concept of the 'scheme' or equivalent expressions such as project or undertaking."

94. Lord Brown's speech in *Waters* includes passages to similar effect, especially at [156]. The use proposed to be made of the land under the scheme therefore falls to be disregarded, and to that extent any key value or ransom value attributable to the scheme must be left out of account. Where the "potentiality" of the land for that use is a result of the scheme, it is to be disregarded; where the potential predated the scheme or exists independently of the scheme it may be taken into account.

95. The modern equivalent of the statutory provisions considered in *Pointe Gourde* is section 5 of the 1961 Act, under Rule 2 of which it is agreed the claimant is entitled in this case to compensation for the acquisition of the rights. Under Rule 2 the value of the rights is to be taken to be the amount which they would be expected to realise on the vesting date, 1 March 2013, if they had been sold in the open market by a willing seller. Section 6 of the 1961 Act directs that in specified circumstances identified in Schedule 1 any increase or decrease in the value of the relevant interest is to be disregarded. Where, as in this case, the acquisition is for purposes involving development of the land authorised to be acquired, Case 1 in Schedule 1 requires that there be disregarded any increase or decrease attributable to the carrying out (or the prospect of) development for the same purposes on land other than the relevant land which has also been authorised to be acquired, if that development would not have been likely to be carried out if the acquiring authority had not acquired and did not propose to acquire any of the land. No land or interest other than the rights was acquired by the CPO and it is common ground that neither Case 1 nor any of the other Cases in Schedule 1 is engaged by this reference.

96. In *Waters,* at [63], in a section of his speech concerned with identifying the scheme which is to be disregarded (a matter not in issue in this reference), Lord Nicholls offered six pointers to the application of the *Pointe Gourde* principle in furtherance of the over-riding

guiding principle that dispossessed owners are to receive fair compensation but not more than fair compensation. The first four pointers (to which we were particularly referred) were these:

> "(1) The Pointe Gourde principle should not be pressed too far. The principle is soundly based but it should be applied in a manner which achieves a fair and reasonable result. Otherwise the principle would thwart, rather than advance, the intention of Parliament. (2) A result is not fair and reasonable where it requires a valuation exercise which is unreal or virtually impossible. (3) A valuation result should be viewed with caution when it would lead to a gross disparity between the amount of compensation payable and the market values of comparable adjoining properties which are not being acquired. (4) When applied as a supplement to the section 6 code, which will usually be the position, the Pointe Gourde principle should be applied by analogy with the provisions of the statutory code. Thus in the class 1 type of case the area of the scheme should be interpreted narrowly, for instance, so as to embrace the property acquired under the compulsory purchase order and property which would probably have been so acquired had it not been bought by agreement. In other cases, such as case 2, Parliament has spread the 'disregard' net more widely. Then it may be appropriate to give the scheme a wider scope."

97. Lord Nicholls' warning, in the second of these pointers, against "a valuation exercise which is unreal or virtually impossible" reflected two authorities discussed earlier in his speech. In *Myers v Milton Keynes Development Corporation* [1974] 1 WLR 696 Lord Denning had encouraged an expansive approach to the application of the *Pointe Gourde* principle; he said that in assessing the value of the land acquired "it is important to consider what would have happened if there had been no scheme but instead the area had been allowed to develop without it". Later, at p.704, he suggested that "the valuation has to be done in an imaginary state of affairs in which there is no scheme" and that the valuer must "cast aside his knowledge of what has in fact happened in the past eight years due to the scheme … Instead, he must let his imagination take flight to the clouds. He must conjure up a land of make believe". In *Pentrehobyn Trustees v National Assembly for Wales* [2003] RVR 140 the Lands Tribunal had been called upon to rewrite the history of Mold over 17 years, a task which it described at paragraph 98 as virtually impossible. It would seem to be these cases which Lord Nicholls had in mind when he observed in paragraph 56 of his speech that "there are indications that in some cases the application of the *Pointe Gourde* principle has become too wide ranging", and against which his second pointer was directed.

98. Lord Nichols' second pointer clearly calls into question the admissibility of such uncertain exercises of imagination. Lord Brown added his explicit disapproval at [148], saying that "it cannot be right thatthe valuer must let his imagination "take flight to the clouds"".

99. In *Spirerose* both the Lands Tribunal and the Court of Appeal had assumed the existence of a planning permission for residential development which did not in fact exist. Lord Neuberger described this as a very surprising result and pointed out, at [50], that:

> "… if a statute directs that property is to be valued on an open market basis as at a certain date, one would not expect any counter-factual assumptions to be made other than those

which are inherent in the valuation exercise (such as the assumption that the property has been on the market and is the subject of a sale agreement on the valuation date) or those which are directed by the statute."

100. Later in his speech, at [55], Lord Neuberger associated himself with Lord Brown's disapproval (in *Waters)* of the *Myers* approach to the *Pointe Gourde* principle, and went on:

> "The only way the *Pointe Gourde* principle could be relied on, as a matter of logic, appears to me to be on the basis that, if the scheme in question had not been in existence, then at some time before the valuation date, the respondent land owner would have applied for, and, on the balance of probabilities, obtained permission for mixed development. I do not consider that that would be a legitimate invocation of the *Pointe Gourde* principle, which is concerned with the effect of the scheme on the value of the owner's interest, not with the characterisation of that interest - see the remarks of Lord Cross of Chelsea in *Rugby Joint Water Board v Shaw-Fox* [1973] AC 202, 253, approving a dictum of Russell LJ in *Minister of Transport v Pettitt* (1968) 67 LGR 449, 462. It may amount to the same point put another way, but, when assessing compensation, it is, at least generally, inappropriate to invoke the principle for the purpose of speculating what might have happened."

It may be said that Lord Neuberger went further than the other law Lords in limiting the effect of the *Pointe Gourde* principle, but it seems to us that his disapproval of non-statutory assumptions is consistent with the unanimous treatment of the principle as one of statutory interpretation.

Submissions

101. On behalf of the claimant Mr Roots reminded us that in order to value the shooting rights in accordance with Rule 2 of section 5 of the 1961 Act it had to be assumed that they were offered for sale in the open market on the valuation date. He submitted that on the facts the existence of the rights prevented the reference land from being developed and used as a replacement livestock market. The Council would have been unable to realise the value of the site of the existing market without providing a replacement market within its administrative area. For the purposes of obtaining confirmation of the CPO, the Council had successfully made the case that there was no feasible alternative to the reference land for the development of a new livestock market. Only the extinction of the rights and the construction of the new market would enable the existing market to be closed so that its site could be redeveloped.

102. In his opening argument Mr Roots submitted that because of these circumstances, leaving aside the possible effect of the *Pointe Gourde* principle, on an assumed sale of the rights on the valuation date the most likely purchaser would have been the Council in its capacity as the owner of the reference land and the owner of the site of the existing market. If it was assumed that the Council did not have compulsory powers the Council would have had to pay a price for the rights which reflected their ability to unlock the development potential of the two sites.

103. In answer to the proposition that the Council should be assumed to be the purchaser of the rights, Mr Humphries, for the Council, reminded us of Lord Hoffmann's characterisation

(in *Gray* (*Lady Fox's Executors) v Commissioners of Inland Revenue* [1994] 2 EGLR 185) of the hypothetical parties to an assumed open market transaction: the vendor is hypothetical, anonymous, reasonable, prudent and serious; the buyer shares these qualities and is also anonymous, but has the additional attribute of embodying whatever was actually the demand for that property at the relevant time.

104. The evidence of Mr Eden had assumed that, but for the Council's scheme, the reference land would have been acquired by a developer, rather than by the Council. In his closing submissions Mr Roots adopted the same approach and did not invite us to assume that, disregarding the scheme, the Council would nonetheless have owned the reference land and been in the market for the rights on 1 March 2013.

105. In any event, Mr Roots submitted, a hypothetical willing seller of the rights would have known that he held the key to both sites, and would have sought to negotiate a price for the key which represented a proportion of their development value. For the purposes of determining the preliminary issue it was not necessary to quantify that value. The issue proceeded on the basis that, leaving aside the effect of *Pointe Gourde*, the rights had a value related to the owner's ability to unlock the development potential of the reference land and the cattle market site.

106. Mr Roots acknowledged that there were similarities between the facts in both *Waters* and *Pointe Gourde* and those in the present case, in that the premium value of the rights derived from their ability to unlock the development value not only of the land over which the rights were held but also of town centre market site. In *Waters* the land acquired had an enhanced or "ransom" value consequent upon its indispensable status for the provision of a replacement wildfowl reserve in connection with the redevelopment of Cardiff Bay. The House of Lords decided that compensation should not be awarded on that basis. However, he submitted, there were significant distinctions which lead to the conclusion that the *Pointe Gourde* principle did not require the premium value of the rights in this case to be disregarded. The pressure to develop the town centre site as a supermarket, the need to relocate the livestock market, and the suitability of the reference land as an alternative site for the market all predated the Council's decision of 29 April 2003 to embark on its own project for the redevelopment of the market site. It did not matter that the reference land had not been identified as suitable at that stage, what mattered were its own characteristics.

107. It was held in *Waters* that the *Pointe Gourde* principle had survived the enactment of section 6 of the 1961 Act, and Lord Nicholls had indicated in the fourth of his pointers in paragraph 63 that it should now normally be applied as a supplement to section 6. Mr Roots submitted that it was therefore open to the Tribunal to apply the principle when section 6 was not applicable (as in this case).

108. The relationship between *Pointe Gourde* and section 6 had not been considered in detail in *Spirerose*. Mr Roots submitted that Lord Nicholls' pointers in *Waters* survived *Spirerose.* He invited us to apply the *Pointe Gourde* principle by analogy with section 6 by reformulating the principle as follows: "for the purposes of valuing the rights, no account should be taken of any increase in their value which is attributable to the prospect of development of the reference land as a new livestock market if such development would not have been likely to be carried

out if the acquiring authority had not acquired and did not propose to acquire the reference land and the rights". This formulation inevitably required a degree of speculation on what was likely to have happened if the Council had not resolved to undertake the promotion of the town centre site in its own right.

109. Referring to Lord Neuberger's comments in *Spirerose* that one would not expect counter-factual assumptions to be made other than those which are inherent in the valuation exercise or those which are directed by statute, Mr Roots submitted that since section 6 requires it to be considered whether or not development "would have been likely", the same must apply to the *Pointe Gourde* principle when applied by analogy with section 6. Consideration of what would have been likely absent the Council's scheme was also consistent with the need to assess the potential of the land before the scheme came into existence, including its potential to unlock the value of other land *(*as in *Batchelor*).

110. The question of fact to be answered was therefore this: if the acquiring authority had not acquired and had not proposed to acquire the reference land and the rights, is it likely that the reference land would have been developed for a livestock market and the existing market site for a supermarket? Mr Roots invited us to give an affirmative answer to that question.

111. Events which had occurred as part of the scheme ought to be taken into account, Mr Roots submitted, as evidence of what would have been likely to have happened in the absence of the scheme. Adopting that approach Mr Eden's conclusion was that a development of the reference land would have been carried out had the Council not acquired or proposed to acquire it. His assessment was rooted in events which had occurred and did not involve an exercise that was "unreal" nor one which was "virtually impossible". There was no need to speculate about planning policies, no need to speculate about parties supporting or objecting to planning applications, and no need to speculate whether the Welsh Government would have repealed the obsolete and unnecessary Victorian Statutes. The Tribunal should rely on what actually happened as evidence of what would have been likely to have happened.

112. Mr Roots submitted that by the middle of 2002 there were strong planning and commercial reasons for the redevelopment to occur in any event, and the only obstacle was the relocation of the livestock market. At the same time it was clear that the substantial investment required to the livestock market could only be achieved by its relocation. Had the Council not resolved to promote the proposals itself, there was no reason to suppose that it would have stood in the way of proposals put forward by private developers, nor that it would not have cooperated as the local planning authority and as the owner of the market site. There was little risk to such a developer in purchasing the reference land at auction-the outlay was not great and it could have been sold again at agricultural value. There was a high likelihood that, if the Council had not acquired the reference land, it would have been developed as a livestock market allowing the market site to be developed as a supermarket.

113. Mr Roots criticised Mr Russell-Smith's approach, which, he said, was to assume that nothing at all would have happened. This overlooked the commercial and planning pressures to develop the market site before an out-of-centre site gained planning permission. Mr Ashworth's evidence to the Tribunal was also criticised as being odds with that which he gave to the CPO Inquiry. In any event, even if alternative sites were now available, that would not

rule out a premium value for the rights, although it might be relevant to quantum – which was not the subject of the preliminary issue.

114. For the Council, Mr Humphries invited us to take a cautious approach to the application of the *Pointe Gourde* principle, consistent with the warnings of Lord Brown in *Waters* and Lord Neuberger in *Spirerose.* What was to be disregarded was enhancement in value solely attributable to the presence of the acquiring authority in the market as a purchaser of the rights in the exercise of its statutory powers. That exercise in disregarding part of the value of the rights in the claimant's hands did not require the deployment of elaborate counter-factual assumptions not rooted in the valuation exercise or directed by section 6 and Schedule 1 of the 1961 Act.

115. Any key value or ransom value in the rights by March 2013 was due entirely to the Council's scheme submitted Mr Humphries. That was clear from the fact that, although a search had been made for site potentially suitable as the site of a new livestock market before 2003, nobody had suggested the reference land for that purpose. When the reference land had been acquired at auction by the Council in 2006 it had achieved only an agricultural value, and if the rights had been offered at the same time they would have commanded a price reflecting their sporting value, without any enhancement on account of the prospect or potential for its use as the site of a new livestock market.

116. There was no justification, said Mr Humphries, for conjuring up a hypothetical purchaser of the rights who had taken all of the steps previously taken by the Council and for whom the acquisition of the rights was therefore the final hurdle to be overcome before a valuable redevelopment of the town centre site would become possible. Lord Nicholls' fourth pointer (and his reference to the application of the *Pointe* Gourde principle as a supplement to section 6) did not require the principle to be applied where section 6 was not engaged at all. *Pointe Gourde* did not justify the making of any assumption about the characteristics or previous actions of the hypothetical purchaser.

117. A proper application of Lord Nicholls' pointers was, Mr Humphries submitted, clearly fatal to the claimant's case. The suggestion that £5 million might be the value of the right to station a maximum of eight guns within ten metres of the field boundary not more than ten times a year could not possibly be regarded as a "fair and reasonable result". It depended on a speculative valuation exercise which required the construction of an "unreal or virtually impossible" counter-factual matrix. It led to a gross disparity between the value of shooting rights in normal circumstances, and the sums claimed for the rights over the reference land, when there was nothing inherently more valuable about these rights than any others.

Discussion and conclusion

118. We begin our consideration of these arguments by reminding ourselves of the guiding principle that dispossessed owners are to receive fair compensation but not more than fair compensation. The Tribunal's task in this reference is to determine fair compensation for the compulsory acquisition of the claimant's right to shoot on ten occasions a year as set out at paragraph 10 above,

119. The assessment of compensation is a statutory exercise to be conducted in this case in accordance with rule 2 of section 5 of the 1961 Act. It is common ground that none of the statutory assumptions in section 6 or Schedule 1 of the Act apply. The Tribunal's eventual task will therefore simply be to ascertain the amount which the claimant's shooting rights would have been expected to realise if sold on the open market by a willing seller on 1 March 2013. That will require the making of assumptions, contrary to the true facts, that the rights were offered for sale in the open market on that date by a willing seller, and that a sale was achieved. Apart from certain implicit, subsidiary assumptions about the characteristics of the notional parties to that sale which we have already referred to, the statute does not require the making of any other counter-factual assumption in this case. In other cases it may be necessary to make assumptions about planning permission, but it is agreed that the only permission which regard need be had in this case is the permission which existed in reality for the development of the reference land as a new livestock market.

120. The agreed terms of the preliminary issue assume that the rights had, or at least may have had, a significantly greater value than their "intrinsic value as shooting rights". We are not called upon at this stage to quantify that value, and its existence is disputed by the Council. We are required to assume that it exists and, on that assumption, to consider whether that enhanced value is entirely due to the scheme underlying the Council's acquisition of the rights. If the rights had a value greater than the value of other shooting rights the claimant is entitled to compensation reflecting that enhancement, unless the enhancement is attributable solely to the Council's scheme for the construction of a new livestock market and redevelopment of the site of the existing market.

121. As explained in *Spirerose*, the *Pointe Gourde* principle is a gloss on the concept of value. It requires that part of the value of land or rights over land is to be disregarded for the purpose of ascertaining compensation. Where it is said that the value of land has been increased by the scheme of the acquiring authority, the application of the principle does not require that any positive assumption be made. What is required is to identify that portion of value which is attributable solely to the scheme. It may sometimes be helpful to consider what would have happened but for the scheme, but the purpose of that exercise is to identify how much of the current value of the land is referable to the scheme.

122. Mr Roots invited us to apply the *Pointe Gourde* principle by analogy with section 6 and to consider what would have been likely to have happened if the acquiring authority had not acquired and did not propose to acquire the reference land and the rights. That invitation is based firmly on the fourth of Lord Nicholls' pointers in *Waters.*

123. In the fourth *Waters* pointer the reference to the *Pointe Gourde* principle supplementing section 6 ought, we consider, to be understood in light of Lord Nicholls' discussion of lacunae in the statutory scheme. He found it impossible to believe that Parliament intended that enhancement in the value of the subject land should not be disregarded where it was attributable to the prospect of its own development (paragraph 51), or was due to the development of land acquired by agreement rather than by compulsion (paragraph 53). It was the existence of these "gaping lacuna" which appears to us to have caused Lord Nicholls to consider that it was appropriate to supplement the statutory code. It was nonetheless clear that the application of the principle was to be constrained, and that a valuation exercise which was unreal or virtually impossible was not well suited to achieving a fair and reasonable result.

124. In *Spirerose* the existence of the lacuna identified in *Waters* was disapproved and Lord Walker (at [26]) described Lord Nicholls' discussion of section 6 in paragraphs 49 to 54 of *Waters* as not being essential to the decision. Although no comment was made on the pointers it was made clear that the *Pointe Gourde* principle was an approach to interpretation, rather than a separate principle which applies because the statutory code is not exhaustive (as Lord Nicholls appears to have regarded it). We do not consider ourselves entitled, after *Spirerose*, to re-write the history of the town centre site and the reference land in the manner suggested by Mr Roots, substituting a developer in the shoes of the Council. We are conscious that *Spirerose* was concerned with planning assumptions rather than more generally with what would have been likely to have happened but for the scheme under consideration but the emphasis on the *Pointe Gourde* principle as an approach to construction (Lord Walker at paragraph 13, Lord Collins at paragraph 128, Lord Scott at paragraph 9) and the passage from the speech of Lord Neuberger which we have quoted at paragraph 100 above, seem to us to be of general application. Nor do we think that the approach taken by Mr Eden is consistent with the first or second of Lord Nicholls' pointers.

125. In contrast, it is permissible and appropriate for us to consider whether there existed in the reference land or in the rights an enhanced value which existed independently of the Council's need to find an alternative site for the livestock market. Although we are concerned in this reference only with the value of the rights, it is clear to us that any additional value in the rights must depend on their capacity to inhibit, or ransom, the use of the reference land for some more profitable purpose.

126. In considering whether any such value existed independently of the Council's proposals, two aspects of the history of the reference land seem to us to be significant.

127. The first is that the reference land did not feature in the list of fourteen sites identified by Newland Rennie Wilkins in December 2002, nor was it subsequently identified as an alternative site prior to its being offered for sale at auction in July 2006. It might fairly be said that the December 2002 list does not appear to have been the result of a particularly intensive search, and the reference land clearly has been a suitable site from the outset, but there seem equally to have been a number of alternative sites which attracted more immediate attention and obtained favourable planning treatment.

128. The second aspect of the history of the reference land is that when it did come on to the market it was sold as part of a larger site at an agricultural value. It seems absolutely clear that there was no competition for the land from supermarket operators or other developers seeing it as providing a potential foothold on the town centre site.

129. These two events, one pre-dating and one post-dating the inception of the Council's scheme seem to us to demonstrate that there was nothing outstanding about the reference land itself which connected it to a valuable use of the town centre site. On the contrary, it was only the fortuitous arrival of the reference land in the auction catalogue at a time when the Council, as owner of the town centre site, had a particular need for an alternative location for the livestock market, which made that connection. Having acquired the reference land the Council had a particular requirement for the rights. But for the CPO, that requirement would no doubt have conferred an enhanced value on the rights as the last piece of the jigsaw which had to be

put in place to enable the redevelopment of the original market site to proceed. That enhancement is required to be disregarded because it was not the result of a pre-existent development potential but was the product of the Council's scheme and was not available to the claimant independently of the Council's plans.

130. We were referred in argument to *Fletcher Estates v Secretary of State for the Environment* [2000] 2 AC 307 in which the House of Lords considered the proper construction of s.17(4), Land Compensation Act 1961 and decided that the scheme for which land was proposed to be acquired must be assumed to have been cancelled on the date of publication of the notice of making of a compulsory purchase order. Lord Hope supported this construction of the statute by considering the practical difficulty of assessing all of the factors relevant to the planning status of a site over a long period (at p.323A-E):

> "It is one thing to examine these factors, on the assumption that the proposal has been cancelled on the relevant date, in the light of existing circumstances. It is quite another to look back into the past and to try to reconstruct the planning history of the area on the assumption that the proposal had never come into existence at all. The further back in time one goes, the more likely it is that one assumption as to what would have happened must follow on another and the more difficult it is likely to be to reach a conclusion in which anybody can have confidence."

Although Lord Hope was concerned specifically with the reconstruction of planning history, the difficulty which he identified of reaching a reliable conclusion by building one assumption on another is just as acute when the subject of the enquiry is the removal of obstacles to a supermarket development.

131. As we have explained, we do not think it is legitimate to assume a different outcome to the Council's cabinet deliberations on 29 April 2003 and then to plot a fictional course of events leading almost 10 years later to a final fictional event, the sale of the rights in the open market on 1 March 2013. Only the sale, the last event in the hypothetical sequence described for us by Mr Eden, is required by the statutory code. In mapping Mr Eden's route only events which are known to have happened before the commencement of the scheme, or subsequent events which cannot have been affected by the scheme, could confidently be relied on as triangulation points. All other steps on the journey involve speculation, with the end result being a landscape of make-believe providing no reliable basis for a valuation.

132. Even if it was legitimate to embark on the counter-factual enquiry on which the claimant's case is based, we are not satisfied on the balance of probability that the journey would lead to the required destination.

133. Although we accept Mr Roots' submission that events which occurred in reality can be considered as evidence of what might have occurred if the Council had not undertaken its own scheme, we do not regard that evidence as making a persuasive case. The further in time actual events are from the inception of the scheme, the less reliable a guide to events in a hypothetical world they become. It is striking that Mr Eden's evidence assumed that each step taken by the Council would have been taken by a private developer, and that they would have been taken in the same or a similar sequence, so that the final step, the acquisition of the rights, would have

occurred on 1 March 2013. We do not think that is a legitimate approach, because it assumes the very set of circumstances which it is necessary to prove. The first step must be to consider what decision the Council would have made on 29 April 2003 if it had not decided to reject the Tesco approach and embarked on its own project. Would it have rejected the Tesco offer? Given the advice it had received about best value it would presumably have been bound to do so, or a least to have sought to negotiate it, but what alternative course of action would it then have embarked on and how successful is it likely to have been in resisting the very considerable pressure for out of town-centre development?

134. The officers' report to the cabinet meeting on 29 April 2003 described that date as a "critical moment" with a planning application at Llanfoist imminent. The Council was in a weak position having published a series of reports highlighting the need for additional supermarket space. It was advised that its prospects of resisting out of town-centre proposals depended entirely on the delivery of a food store on the existing livestock market site, but, as the officers pointed out, the credibility of its own proposals hinged on threatening the use of compulsory purchase powers to acquire the market lease and to dislodge AMAL, whose option to renew that lease tied up the site for the foreseeable future. Without the threat from compulsory powers AMAL was in a position of strength which worked to the benefit of its development partner Tesco. The use of CPO powers was therefore essential to the deliverability of the site and also to the fulfilment by the Council of its obligation to achieve best value, as the final sentence of paragraph 3.6 of the report makes clear: "Whilst it is not possible to predict the outcome of the CPO, it will provide an open and transparent process so that [the Council] can show that it has properly disposed of a public asset and reached the best price under the circumstances".

135. If the Council is to be assumed not to have embarked on its own project to deliver the town centre site for a supermarket, using or threatening to use CPO powers where necessary, how would it have dealt with AMAL? Without AMAL's cooperation how would it have addressed the "real pressures that are on the immediate horizon" of which it was warned by its officers? How would the developers with out of town proposals have responded? Would there have been an application for a large retail development at Llanfoist as was feared? Would that application have succeeded? It seems to us impossible to conclude with any confidence that the answers to these questions would have left the town centre development on the table as a viable proposition by 2013. The outcome is unknowable, but it is at least as likely that the Council's resistance to out of town-centre development would have failed, that Abergavenny's need for supermarket space would have been satisfied at Llanfoist, and that the economics of the relocation of the livestock market would have been transformed for the worse as a result. In those circumstances we can see no prospect of the rights commanding a premium value.

136. If the Council had decided not to reject the Tesco offer in favour of running its own project, it might either have accepted it (which we consider improbable given the advice it had received) or negotiated with Tesco in an attempt to secure a better offer. Tesco had a cooperative relationship with AMAL which was in a strong position because of its option to renew the lease of the market. The most likely direction for events to take in the no scheme world was for the Raven/Tesco/AMAL scheme to progress. Whether that project would still have been in search of a replacement market site by 2006, when the reference land became available, is speculative.

137. Nor do we think there is any sound basis for concluding that the Council would have been minded to seek a release from its obligations under the Victorian Statutes, or give the commitments in the Memorandum of Understanding, if the redevelopment of its own land was not in prospect. We think it very unlikely that a private sector developer would have been prepared to assume or fund such long term commitments.

138. Even if the out of town supermarket proposals had been resisted there remains considerable doubt in our minds over the alternative sites for the replacement market at Little Castle Farm and Llanfoist. It was the Council's acquisition of the reference land in 2006 which led to these sites being pushed to the margin. The evidence on the problems associated with the sites was very thin and we are not persuaded that, had the Council stood aside, one of the alternative sites would not have emerged more strongly as the preferred option for the relocation of the market.

139. Finally, if a developer had taken the Council's place at the auction in 2006 it would have sought to tie up the rights at the same time either by an outright acquisition at a nominal value, or by an option arrangement. We think it inconceivable that a developer who acquired the reference land in 2006 would have allowed itself to be ransomed by the owner of the rights in 2013. The statutory valuation hypothesis is not well adapted to this aspect of open market practice and would add an additional element of unreality to any valuation. As we are not satisfied on the balance of probability that, but for the scheme, a developer would be interested in the rights, it is not necessary for us to consider this problem further.

Conclusion

140. For these reasons we determine the preliminary issue in the affirmative. Any significant increase in the value of the rights, above their intrinsic value as shooting rights, should be disregarded because we are satisfied that such increase is attributable solely to the Council's scheme for the construction of the new livestock market on the reference land and the redevelopment of the existing Abergavenny livestock market site.

141. This decision is final as regards the preliminary issue. We assume that in the light of our conclusions the parties will now be able to reach agreement on compensation. If that assumption is unjustified the parties should submit their proposals for the further consideration of the reference within one month of this decision. If the parties are unable to reach agreement on the question of costs, any application for an order for costs should be made in accordance with the letter which accompanies the decision.

Martin Rodger QC
Deputy President

P D McCrea FRICS

2 December 2014