

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – small industrial estate – capital value of freehold interest – rent passing – open market rental value – yield – comparables – loss of rent on review – management time – compensation awarded £298,450

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

WILLOWTECH LIMITED

Claimant

and

NEATH PORT TALBOT
COUNTY BOROUGH COUNCIL

Respondents

Re: Units 1-10
Cramic Way
Port Talbot
SA13 1RS

Before: A J Trott FRICS

Sitting at Swansea Crown Court, The Law Courts, The Guildhall,
St Helens Road, Swansea SA1 4PF
on 6 and 7 October 2009

Mark Spackman, instructed by Cameron Jones Hussell & Howe, for the claimant
Adrian Trevelyan Thomas, instructed by the Head of Legal and Democratic Services, Neath Port Talbot County Borough Council, for the acquiring authority

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DECISION

Introduction

1. The claimant company, Willowtech Limited, owned the freehold interest in a small industrial estate, comprising land and buildings, known as Units 1-10, Cramic Way, Port Talbot SA13 1RS (the reference land).

2. The acquiring authority, Neath Port Talbot County Borough Council (the Council) made the Neath Port Talbot County Borough Council (Port Talbot Peripheral Distributor Road – Stage 1C) Compulsory Purchase Order 2002 and an associated Side Roads Order on 24 May 2002. These were confirmed by the National Assembly for Wales on 11 June 2004. The Council served a Notice to Treat and a Notice of Entry on the claimant in respect of the reference land on 17 June 2004 and took possession on 4 July 2004 (the valuation date).

3. The dispute concerns the open market value of the freehold interest in the reference land and, in particular, whether the value should be found by capitalising the passing rent (the claimant) or by capitalising the estimated open market rental value (the Council) and, in either event, what the capitalisation yield should be.

4. Mr Mark Spackman appeared for the claimant and called its sole director, Mr Arthur Thomas, as a witness of fact. He called Mr Robert Harlow MRICS, a director of Lambert Smith Hampton, as an expert valuation witness.

5. Mr Adrian Trevelyan Thomas appeared for the Council and called Mr Hugh Phillips BSc, FRICS, FCIA, a partner in Knight Frank LLP, as an expert valuation witness.

6. I made unaccompanied inspections of the reference land and 11 comparable sites on 7 and 8 October 2009.

Facts

7. The reference land is located near the town centre of Port Talbot immediately to the south west of the main Swansea to London railway line, south east of the river Afan and south of the elevated Heilbronn Way.

8. At the valuation date vehicular access to the site was from Cramic Way which at this point was an unmade road over which the claimant had prescriptive rights of way. Cramic Way joined Dock Road to the south east, close to the level crossing over the main railway line, beyond which lay the town centre.

9. There were 10 industrial units on the reference land the areas of which have been agreed. These vary from 362 sq ft (unit 10) to 1,818 sq ft (Units 1-3). All 10 units had separate supplies of mains water, electricity and gas. The parties agreed that the condition of the buildings at the valuation date was fair.

10. Units 1-3 formed a single storey, flat-roofed, detached building which was used for offices, storage and a workshop. It was built in the 1940s and had its own yard with direct access onto Cramic Way.

11. Units 4-10 were originally built in the 1930s and refurbished in the early 1980s. Units 4-7 comprised a single-storey building used as four terraced workshop/storage units. The building was of steel frame construction with steel lattice roof trusses and clad with single skin uninsulated plastic coated profiled steel. There was a brick built extension to the rear providing office, storage and shared toilet accommodation. Units 4-6 shared a yard as did Units 7 and 8. This communal yard was divided into two by a metal chain link fence.

12. Unit 8 was a single storey terraced building with brick elevations and flat roof. Unit 9 was a single storey workshop constructed of a steel frame with steel lattice roof trusses and clad with single skin uninsulated profiled steel. Unit 9 had its own yard as did Unit 10 which was a single storey flat roof and lean-to workshop building constructed of brick and concrete block elevations with a felted and profiled steel roof.

13. With the exception of Unit 9, Units 4-10 were all let on what were described as a "licensing agreement" and marked "draft heads of terms". Unit 9 was let on a document described as a "tenancy agreement" and also marked "draft heads of terms". The licensing agreements were all in standard form with rent payable monthly in advance and with one quarter's notice on either side. Rents were reviewable every two years. The licensee in each case was responsible for repairs and for all outgoings including insurance, rates, electricity and gas. The tenancy of unit 9 was in substantially the same terms. Units 1-3 were let on a similar tenancy agreement (again marked "draft heads of terms") but for a fixed term of five years rather than quarterly. Each of the licence/tenancy agreements consisted of a single page.

14. The Council accepted that the licensing and tenancy agreements provided for exclusive occupation which had continued for more than six months. It was assumed that Units 4-10 were periodic tenancies with protection under the Landlord and Tenant Act 1954. The tenancy of Units 1-3, while also enjoying such protection, was a letting between the claimant and a connected person and it was agreed not to have been an arm's length transaction.

15. Brief details of the units and the rents being paid at the valuation date are given in Appendix 1. The total rent receivable by the claimant at the valuation date was £42,600 per annum.

16. The experts agreed a schedule of relevant comparables which they said represented the transactions that were closest to the reference land in terms of size and the valuation date. They did not agree about the relevance of these comparables in assessing the rental value of the reference land or about the requisite adjustments. The experts also agreed the yield evidence and the facts relating to the transactions but again they disputed the relevance of one another's evidence.

17. The rental evidence relied upon by the experts was derived from four sites, Towngate Business Centres in Cramic Way, the Kingsway Property Partnership in Cramic Way, and industrial estates in Endeavour Close and Addison Road, Port Talbot.

Issues

18. There are three outstanding issues:

- (i) the rent to be capitalised
- (ii) the capitalisation yield
- (iii) other heads of claim (loss of rent on review, management time and inadequacy of an advance payment and statutory interest).

Issue 1: The rent to be capitalised

19. Mr Thomas described the operation of the industrial estate. He was the sole director of Willowtech Limited and his wife was the company secretary. Units 1-10 (and some adjoining land that was not taken for the scheme) were the only assets of the company. Its income came from the rents although for a short period it also received payment from one of its tenants, Quintek Distribution Limited, which occupied a number of the units from 2001 to 2003. Such payments were for offloading deliveries made to the site prior to storage of goods awaiting repair off-site. Willowtech sub-contracted this work and, according to Mr Thomas, made a loss. Willowtech also made a small mark up on electricity charges. It charged the tenants according to metered usage but paid the supplier direct.

20. At the valuation date Units 1-3 were occupied by Silverstar Contracts Limited which had taken the five year tenancy on 2 April 2003 at a rent of £1,350 per month. Silverstar had been incorporated on 26 May 1999 and Mr Thomas was its sole director and his wife was the company secretary. They each held one of the two issued shares. Mr Thomas said that Silverstar paid the same amount of rent for Units 1-3 as Quintek had been paying prior to its vacating the premises in March 2003. Silverstar paid its rent to Willowtech in cash.

21. Mr Thomas said that his records showed that the estate had been fully occupied over the years and that the rents had risen continuously. He explained that new tenants had to pay a minimum of the previous rent received and that he sought to increase the rent as much as the market would bear. There was a regular turnover of tenants although the occupant of Unit 9, B

J Auto Repairs, had been there throughout. There were no long voids as new occupants were quickly found. The Units were attractive to tenants because there were no planning restrictions about the type of use or the hours of work and because Willowtech did not charge VAT, which helped the kind of small businesses that were typical of the occupiers.

22. Mr Thomas first knew about the scheme when the Council wrote to him in February 1999 describing the proposed route of the peripheral distributor road. He said that once his tenants found out about the scheme he was unable to implement the rent reviews under the tenancy agreements. This led to a loss of rental income. That loss was first quantified in a letter from Mr Harlow to the Council on 16 July 2004. In that letter he said that the claimant considered that the rents on three units would have been increased had it not been for the scheme:

Unit 4 – from £260 per month to £320 per month with effect from 24 August 2004

Unit 7 – from £220 per month to £320 per month with effect from 25 February 2003

Unit 10 – from £200 per month to £320 per month with effect from 30 September 2003

Mr Harlow pursued the claim for Units 7 and 10 in his expert report (presumably recognising that the review on Unit 4, coming as it did after the valuation date, was not relevant). He said:

“I have ignored the outstanding rent reviews of Units 7 and 10 for capitalisation purposes, but will make a claim under rule 6 in this respect”.

23. Mr Harlow said that the rental evidence had failed to establish a clear tone of value, probably because the comparable estates were not fully occupied and landlords had acted with a view to maximising occupancy rates. Towngate business centre was a 1960s detached factory with a GIA in excess of 50,000 sq ft that had been subdivided into smaller units ranging from 450 sq ft to more than 20,000 sq ft. But there were proposals to redevelop the site and so rental levels were never maximised. The four units at the Kingsgate Property Partnership were in close proximity to the reference land and formed part of a 1930s detached brick building. All four were let on three monthly licences but the date of only one of the transactions was known. Endeavour Close was a development of purpose-built nursery units constructed in phases between the late 1970s and the mid 1990s. It lay on the fringe of a residential area. The units were similar to Units 4-7 on the reference land and had a communal yard space. Addison Road was a development of 50,000 sq ft of managed workshop units created by the subdivision of a larger industrial complex. It was located in a residential area and had a tortuous vehicular access. The comparable units were all accessed via a central “trucking corridor” rather than from an external yard. They were all let on inclusive annual tenancies.

24. Lettings at Endeavour Close showed a rental value of approximately £3.50 per sq ft. The evidence of similar units at Addison Road ranged from £2.35 per sq ft to £3.91 per sq ft (Units 2, 4, 6 and 12A) and from £2.39 per sq ft to £4.18 per sq ft (Units 17-21). These rents were inclusive of outgoings. The evidence most contemporary with the valuation date showed the highest rent.

25. In his first report Mr Harlow had relied upon the evidence from Towngate Business Centre, Lonlas Village Workshops, Neath and Penrice Court, Swansea Enterprise Park. He accepted in cross-examination that the latter two sites should only be used to assess a trend in the market over time and that they were not relevant as comparables of rental value. He agreed that Towngate and Kingsway were better located than the reference land, being more prominent and adjoining an adopted highway. Whilst Endeavour Close was a properly designed estate with purpose-built and contemporary buildings it was at the edge of a residential area and had suffered from vandalism. It was difficult to make a percentage adjustment against the inclusive rents at Addison Road. Mr Phillips' use of 25% gave results which were out of line with all the other comparables.

26. Mr Harlow estimated the rental value of Units 1-3 at £5.50 per sq ft and the value of its exclusive yard at a further £0.50 per sq ft. Units 4-7 were valued at £3.70 per sq ft and Units 8 and 9 at £4.65 per sq ft, although the figure for Unit 9 included its yard. Unit 10 was also valued at £4.65 per sq ft but its yard was valued separately at £0.50 per sq ft. The total estimated full rental value was £39,250 per annum which Mr Harlow said lay within 10% of the passing rent. He concluded that the investment should therefore be valued off the passing rent of £42,600 per annum.

27. When cross-examined about his valuation Mr Harlow said that his rents reflected the advantages of no VAT and the proximity of the reference land to the town centre and its good public transport links. Units 4-6 and 9 were 1,000 sq ft units and were comparable to Endeavour Close. He had adjusted the comparable values upwards (from £3.50 per sq ft) to reflect the overall condition of the reference land and the advantages cited above. He uplifted the comparable rent by 50% when valuing Units 1-3 because it was a detached and "bomb proof" building which gave an additional level of security. He had added a further £0.50 per sq ft for the yard and would have added more had it not been subject to (unexercised) rights of way in favour of third parties. The higher rent for Units 8 and 10 reflected a (25%) quantum adjustment for smaller units. A higher rent had also been used to value Unit 9 so as to reflect the benefit of its yard.

28. Mr Phillips did not accept that the letting of Units 1-3 to Silverstar was an arms length transaction and ignored it for valuation purposes. He also ignored the letting of Units 5 and 8 to Reynard Properties. He said that the rent had increased substantially without explanation only 11 months before the valuation date and that there was no evidence of the rent having been paid. He relied upon the lettings in Cramic Way (Towngate and Kingsway) which he analysed to show an average of £2.88 per sq ft, Endeavour Close (£3.24 per sq ft) and Addison Road (£3.81 per sq ft inclusive or £2.86 per sq ft when adjusted to FRI terms). He had particular regard to the comparable at Unit 2 Endeavour Close which although larger than most of the Units on the reference land was in a better location. It was used as a garage and MOT station, a similar use to some of those on the reference land. This had been let for five years from August 2003 at £2.50 per sq ft.

29. The evidence suggested an average rent for the reference land of between £2.50 to £3.00 per sq ft on FRI terms. Mr Phillips said that on average the passing rents on Units 4, 6, 7, 9

and 10 exceeded the comparable rents and he had therefore taken the rents reserved for these units as part of his estimated rental value. For Units 1-3 he took £2.50 per sq ft for the building and an additional £0.35 per sq ft for the yard. He also adopted £2.50 per sq ft for Units 5 and 8. This gave a total rental value for the reference land of £25,099 which he increased to £25,500 per annum or £3.00 per sq ft in respect of the agreed area of the buildings (and reflecting all the yard space).

30. Mr Phillips did not accept that Units 1-3 were more secure than the other units and they did not justify a 50% rental premium. The building was similar to that at Towngate where no such premium was discernable.

Issue 1: Conclusions

31. I deal firstly with the two lettings at the reference land that Mr Phillips challenges. Units 1-3 were let on a five year agreement on the 2 April 2003. The letting was between Willowtech and Silverstar who are connected companies, with Mr Thomas and/or his wife owning all the shares in both of them. The rent is £16,200 per annum which both experts say is significantly higher than the full rental value, even allowing for Mr Harlow's 50% uplift. Mr Thomas said that this rent was already being paid by Quintek before Silverstar took occupation but it appears that Quintek paid a monthly cheque to cover their occupation not only of Units 1-3 but also Units 4, 5, 6 and 8. There is no evidence before the Tribunal that Quintek paid the same rent for Units 1-3 as Silverstar. Mr Spackman accepted in his closing speech that the letting to Silverstar was not an arm's length transaction. But Mr Phillips agreed during cross-examination that any purchaser at the valuation date would have a lease for a further three years under which he would be entitled to receive the rent agreed by Silverstar.

32. I am not satisfied that the letting of Units 1-3 is reliable evidence. It is agreed that it was not an arm's length transaction. There is a significant discrepancy between the rent payable and the full rental value and the evidence of payment is incomplete. This was a letting between connected persons at a time when the scheme was well in mind and this casts doubt over the reliability of the letting as good evidence of rental value. If the Scheme did not proceed then Silverstar, as a company connected to its landlord, Willowtech, might not continue to pay all of the rent under the lease (if indeed it was doing so already). I consider that this letting should be ignored.

33. The letting of Units 5 and 8 is different. Firstly, it is not a transaction between connected persons. Secondly, the rent (£1,000 per month) was originally paid by D J Haulage for 4 months before Reynard took occupation in August 2003 and continued paying rent at the same rate. Whilst the rent is significantly above both experts' estimate of the full rental value it is a transaction to which I have had regard.

34. Mr Phillips values Units 1-3 at £2.50 per sq ft for the buildings and £0.35 per sq ft for the yard. Mr Harlow values the buildings at £5.50 per sq ft (having increased the basic rate of £3.70 per sq ft by 50%) and £0.50 per sq ft for the yard. Although the parties have agreed the

area of the buildings they appear not to have agreed the area of the yard where there is a significant difference between them. Mr Phillips measures it at 6,458 sq ft and Mr Harlow at exactly half this amount, 3,229 sq ft.

35. I do not accept Mr Harlow's uplift in value by 50%. It was justified by the fact that it was a detached building of "bombproof" construction which gave it added security. This assertion was not accepted by Mr Phillips and there was no evidence to support an uplifted rent.

36. I have no evidence from the parties which will help me choose between their measurements of the areas of the yard at Units 1-3 (and Unit 10). I have measured the areas from the submitted plans and from these I calculate the areas to be approximately the same as those used by Mr Phillips and I therefore adopt his figures (which, in any event, favour the claimant). Mr Phillips gave five comparables of rented industrial land in Port Talbot, four of which were let at between £0.19 and £0.22 per sq ft with the other being let at £0.28 per sq ft. All of them were considerably bigger than the yards at the reference land. Mr Phillips adopted £0.35 per sq ft which I consider to be a reasonable uplift to reflect the difference in size between the sites.

37. The best comparables in terms of proximity to the reference land and the types of building are those at Towngate and Kingsway. Unfortunately only one of the four Kingsway comparables has details of the date of the letting and that, being in December 2002, is historic (the parties agreeing that values had increased in the years leading up to the valuation date). I therefore do not rely upon the Kingsway comparables. (Mr Phillips did provide more information about other comparables at Kingsway but these were of much larger units.) There are four agreed comparables at Towngate, let in 2003 and 2004, with rents ranging from £2.49 per sq ft (for the largest unit of 1,808 sq ft) to £4.64 per sq ft (for a 700 sq ft unit). The average value of these comparables was £3.43 per sq ft. The average value of the three smaller units was £3.74 per sq ft. Mr Harlow accepted that Towngate was in a better location than the reference land being more prominent and with access to an adopted highway. The claimant suggested that values at Towngate had been affected by the prospect of a new Tesco development on the site but I find that the evidence that this had an effect at the valuation date is insufficient to support this claim.

38. The evidence from the Endeavour Close comparables was more extensive and, with one exception, related to units between 1,076 sq ft and 1,715 sq ft. All the comparables were let on FRI leases between January 2003 and July 2004 at rents ranging from £2.40 per sq ft (Unit 8) to £3.75 per sq ft (Unit 16). The average value of lettings in 2003 was £3.12 per sq ft and in 2004 was £3.52 per sq ft. The letting closest to the valuation date was at £3.56 per sq ft. Mr Phillips placed particular weight on the letting of Unit 2 in August 2003 at £2.50 per sq ft because it was let as a garage workshop and MOT station. In my opinion Endeavour Close is a better quality, purpose-built, more modern industrial estate. Even allowing for its more remote location and its proximity to a residential area I consider that the rental values would exceed those at the reference land.

39. The final set of comparables came from an older, converted industrial estate at Addison Road, Port Talbot which was let on annual inclusive terms and therefore required rental adjustment. The unit sizes were comparable with those at the reference land. Mr Phillips said that a deduction of 25% should be made to bring the rents on to FRI equivalent terms. Mr Harlow said that he found it difficult to put a percentage against this and I agree. I calculate that the average value of the Addison Road comparables, excluding the highest and lowest figures, is £3.69 per sq ft (and not £3.81 per sq ft as stated by Mr Trevelyan Thomas in his cross-examination of Mr Harlow). The average size of those units is 734 sq ft. (The units are divisible into two sizes, the larger ones averaging 955 sq ft and the smaller ones 459 sq ft.) In my opinion a reasonable estimate of this rent on FRI terms would be £3.00 per sq ft.

40. I can find little support for Mr Harlow's figure of £3.70 per sq ft for the larger units and £4.65 per sq ft for the smaller units at the reference land. Units 1-10 are low quality buildings, albeit that the parties agree that they were in fair condition at the valuation date. They were old and served by an unmade road with (unexercised) rights of way over some of the yard space. The only advantage claimed for them (apart from the asserted additional security of Units 1-3 which I have already rejected) was unrestricted working hours and no VAT. I place no weight on the location of the reference land close to the town centre and public transport. That is not a primary requirement of an industrial estate and in any event is a characteristic shared by Towngate. I have taken these factors into account as well as the fact that the vacancy rate at the estate was very low which suggests that the units were popular and let on convenient terms. I think that Mr Phillips has placed too great an emphasis on the letting of Unit 2 at Endeavour Close at £2.50 per sq ft which in any event was let nearly a year before the valuation date.

41. In my opinion the evidence supports a range of value between £2.50 and £3.50 per sq ft. I consider that the reference land falls at the lower end of this range with Units 1-3, 4, 5, 6 and 7 having a full rental value of £2.75 per sq ft. The smaller Units 8 and 10 I value at £3.00 per sq ft. This allows an uplift of just under 10% compared with Mr Harlow's figure of 25%. I value Unit 9 at £3.10 per sq ft to include the yard which neither side has separately measured or valued but which from the plans appears to be approximately equal in area to the building.

42. The estimated full rental value of Units 1-10 at the valuation date is therefore determined at £27,600 per annum as shown in Appendix 1.

Issue 2: The capitalisation yield

43. Mr Harlow adopted a yield of 9.33% and relied upon investment sale comparables covering a broad range of locations, dates and types of building. He said that these showed initial yields of between 7.8% and 8.5% (calculated gross of costs). The lowest yield was on the sale of the Ashmount Business Park, Swansea at 6.74%, but this estate had a 15% vacancy rate that he said distorted the yield downwards. He concluded that the general tone of yield on secondary let industrial investments was in the region of 8%.

44. Two multi-let industrial investments in Fforestfach, Swansea were also relied upon, both being transactions in February 2006. These showed yields of 7.35% (Sharpmaster House) and 11.06% (Aztec Business Centre). Mr Harlow said that while investment yields for well let investments had improved between July 2004 and February 2006 he did not think that there had been any significant variation in the market for secondary investments, such as the reference land, over the same period.

45. Mr Harlow's final comparable was the sale of a long leasehold of a mixed retail and office investment in a secondary location in Mansel Street in the centre of Swansea. It was a 40 year old building which was multi-let and sold in September 2004 off a 9% yield. He said that multi-let investments were unlikely to become fully vacant and would continue to produce an income and offer growth potential. Where such investments were well occupied they could be sold at lower yields than investment let to single occupiers.

46. Mr Harlow rejected Mr Phillips' comparables. Unit 5 at the Rutherglen Centre in the Seaway Parade Industrial Estate, Port Talbot was a long leasehold investment sold (off the market) in November 2002, since when the market had improved. The investment was not on FRI terms and was not accessed by an adopted road. The sale of Power Units at Dock Road, Port Talbot (with which Mr Harlow was directly involved) was of a short leasehold interest which contained redevelopment break clauses in favour of the landlord. This lease was a wasting asset and was not institutionally fundable.

47. Capital values per square foot did not assist when considering multi-let properties rather than modern, single let investments. Single let yields were driven by the strength of the tenant's covenant unlike multi-let investments, such as the reference land, whose capital value was driven by high occupancy rates and rental growth.

48. Mr Phillips relied upon the long leasehold sale of Unit 5 at the Rutherglen Centre, Seaway Parade, a larger and better unit than the reference land, showing a yield of 11%, and the leasehold sale of Power Units which he analysed at 12%. He said that the reference land was in a worse location, had lower quality buildings and was accessed by an unmade road with only prescriptive rights. In view of these factors and the insecurity of the income, Mr Phillips said that the reference land should be valued at a yield of 12.5%. Mr Phillips accepted that leasehold yields were higher than freehold yields. The freehold equivalent for Seaway Parade was 10.5%-10.75% and about 10.5% for Power Units. He said that single let investments generally commanded lower yields than multi-let investments.

49. He analysed the sale of Sharpmaster House, a multi-let building, by reference to its capital value per square foot. This gave a figure of £24.56 per sq ft which he said supported his valuation of the reference land at £24 per sq ft (£3.00 per sq ft and a yield of 12.5%). This compared with Mr Harlow's valuation at £53 per sq ft. Mr Phillips said the sale of Seaway Parade represented a capital value of £18.42 per sq ft and the sale of the Addison Road Estate in October 2001 represented £7.50 per sq ft. He used this last comparable to show that multi-let properties commanded very high yields because of their management problems and that properties did sell on the basis of capital values in Port Talbot.

Issue 2: Conclusions

50. The only comparable that was in Port Talbot and close to the valuation date was Power Units, but that yield was derived from the sale of a short leasehold investment rather than a freehold. Mr Phillips said that the freehold equivalent yield would be about 10.5%. It was a more modern building than those on the reference land and subject to a single letting. Unit 5 at the Rutherglen Centre at Seaway Parade, relied upon by Mr Phillips, was also a more modern unit in a better location. It was a long leasehold sale in November 2002. The net yield was equivalent to a freehold rate of 10.5%-10.75%. The parties agreed that the market had improved leading up to the valuation date.

51. Mr Harlow's comparables were generally close to the valuation date, apart from Sharpmaster House (sold in February 2006) and the Aztec Business Centre (that did not actually sell at all). He said that in his experience yields of secondary properties had not increased since the valuation date but he offered no evidence to support that view. The yield on Sharpmaster House was also low because it was under rented and had potential for rental growth. In my opinion neither of these comparables is helpful.

52. Mansel Street was a mixed retail and office investment in the centre of Swansea. Mr Harlow said that as a multi-let investment it had "synergies" with the reference land. I disagree. It is an entirely different type of building in a different use and in a different location. I find it to be of no assistance.

53. The remaining four comparables relied on by Mr Harlow are investment sales of higher quality, modern, purpose-built industrial units. There is little comparison, either physically or locationally, with the buildings on the reference land.

54. I do not consider that the sale of the Addison Road Estate provides helpful yield evidence. The parties did not rely upon it as a yield comparable and the sale took place in October 2001, nearly three years before the valuation date. It was an investment let on inclusive terms with no agreement as to the appropriate rental adjustments that needed to be made.

55. In his closing submissions Mr Trevelyan Thomas said that Mr Phillips' adopted yield of 12.5% recognised the relevant features of the reference land. The buildings were low quality (although in a fair condition) and were served by an unmade road over which there were only prescriptive rights. The location was in a run down part of Port Talbot. The tenants were small businesses on short tenancies/licences (but with security of tenure). There was uncertainty about the actual level of rents received since in the main it was taken in cash and not banked. Records were only available for one year and there was no good proof that the income stream was secure. The site needed hands on management and there was evidence that the landlord did not have proper control over the insurance of the estate. It was left to the tenants to insure and this appeared to happen haphazardly and without clear management. (Mr

Thomas dismissed this concern as a “minimal risk” and was apparently comforted by the fact that the buildings were “pretty difficult to burn down”.)

56. Mr Spackman submitted that the analysis of Mr Phillips’ comparables did not support a yield of 12.5% to value the reference land. He said that Mr Harlow’s comparables showed much lower yields and were derived from deals undertaken at or around the valuation date. The fact that the comparable properties were not in Port Talbot was not relevant. The only management required was to read the electricity meters and to collect the rents.

57. I consider that Mr Trevelyan Thomas’s summary of the position at the reference land is fair and I have taken it into account in assessing the yield. However, I accept Mr Spackman’s submission that Mr Phillips’s comparables (Seaway Parade and Power Units), when properly adjusted to reflect the leasehold tenure, do not support a yield as high as 12.5% (although I do not agree that the location of the comparables is not relevant).

58. Having considered all the evidence I am of the opinion that the appropriate yield, net of costs, to value the reference land is 10.75%.

Issue 3: Other heads of claim

59. Mr Thomas explained that once his tenants learned about the scheme they were unwilling to pay increased rents. There had been a loss of rent on Units 7 and 10 because it had not been possible to increase their rent on review. The rent on Unit 7 was due for review on 25 February 2003 and that on Unit 10 was due to be reviewed on 30 September 2003. Mr Thomas believed that the rent on Unit 7 would have been reviewed from £2,640 per annum to £3,840 per annum (a 45% increase) and on Unit 10 from £2,400 per annum to £3,840 per annum (a 60% increase). Mr Harlow explained that these figures were not his opinion of value since he had not been instructed to consider 2003 prices.

60. Mr Trevelyan Thomas submitted that the evidence did not support any loss of rent on Units 7 and 10. Mr Thomas had a very relaxed and informal relationship with his tenants and it did not appear that he routinely enforced his right to review the rent. For instance, Mr Bryn Williams, the tenant of Unit 9, had been in occupation from June 1993 at the same rent of £2,340 per annum. This was only reviewed in January 2004 to £3,120 per annum. (This review in itself suggested that it was possible to increase rents even with the knowledge of the scheme.) The review of Mr Williams’ rent was an increase of 33% after eleven years. It was unrealistic to expect an increase of 45% and 60% respectively on Units 7 and 10 after only two years.

61. I have found above that the full rental value of Unit 7 at the valuation date was £4,243 per annum and that of Unit 10 was £2,499 per annum. I therefore do not consider that there was any loss of income from Unit 10 due to the scheme (since it was let at £2,400 per annum at the rent review date in September 2003). Unit 7 appears to have been under rented at the

valuation date, being let at £2,640 per annum. I accept Mr Thomas's evidence that his tenants resisted any rent increases once the scheme was known and that, in his words, "it wasn't the time to push hard". The increase in rent for Unit 9 had been achieved with difficulty and was only possible because the tenant had not had an increase since his tenancy began. I accept that the failure to increase the rent on Unit 7 was due to the scheme and I award the sum claimed, namely the difference between £3,840 per annum and £2,640 per annum or £1,200 per annum. Over the 16 months between the rent review date and the valuation date this amounts to £1,600.

62. Mr Thomas also claimed for management time in dealing with the compulsory purchase of the reference land. A total figure for this head of claim was not specified and, apart from a paragraph in Mr Harlow's original claim letter in July 2004, the only substantive evidence on the point was given orally by Mr Thomas in response to my questions at the hearing. Mr Thomas said that he and his wife had spent six hours a week dealing with the notices to treat and entry and the subsequent claim. He estimated the combined value of their time at £120 per hour including overheads. There was no estimate of the total number of hours claimed.

63. Mr Trevelyan Thomas said that this was not enough to support a claim. There were no timesheets of the time spent and no details of when the time was spent or on what aspect of the compulsory purchase (any time spent on the CPO before its confirmation or on this reference would not be claimable under this head). He conceded that as a matter of law it was permissible to reflect the time taken to formulate the claim but no evidence had been adduced and the claim should be rejected.

64. Mr Spackman submitted that Mr Thomas had done the best he could and had provided details of this head of claim in oral evidence. He did not normally keep timesheets. He was entitled to claim for the formulation of the claim and he had explained the basis for the hourly rate and the number of hours spent per week.

65. There is very little evidence upon which I can base an award under this head and none of it is supported by documents. I am satisfied that Mr and Mrs Thomas did spend time dealing with the claim (before the reference) and that such time should be compensatable. I consider that a minimum award of £750 is justified based upon the testimony of Mr Thomas and such detail as I have available.

66. The final head of claim relates to the fact that the advance payments of £185,000 could not be invested at 9.33% (Mr Harlow's estimated yield on the reference land) and produce the same level of income previously enjoyed (£42,600 per annum). The shortfall was said by Mr Thomas to be £25,340 per annum for five years. Mr Trevelyan Thomas described this head of claim as entirely misconceived and I agree with him. Future income (based on the full rental value) is capitalised at the appropriate yield to give the capital value of the reference land at the valuation date. There is no "shortfall" of income as suggested by the claimant. Credit must be given for any advance payment of compensation but, subject to this, statutory interest is payable on the balance of compensation owing in order to recompense the claimant for its

inability to invest the monies before the determination of compensation. I therefore make no award under this head of claim.

Valuation

67. My valuation of the reference land is set out in Appendix 2. It amounts to £296,500. In reaching this figure I have capitalised the estimated full rental value of £27,600 per annum into perpetuity at a yield of 10.75%. I have also included an additional sum of approximately £38,000 in respect of Units 5 and 8. These units are, in my opinion, highly over rented and I have therefore capitalised the marginal rent (the difference between the rent paid of £12,000 per annum and the estimated full rental value of £4,438 per annum) at a significantly higher yield, taken at 20%, to reflect the added risk of this income. I have similarly valued the small element of marginal income at Unit 4. (I have ignored rent reviews occurring after the valuation date since the small amount of the incremental income and early reversion dates make an insignificant difference to the final valuation.)

Determination

68. I award the following compensation:

- (i) Open market value of the freehold interest: £296,500
- (ii) Loss of rent on review of Unit 7: £1,200
- (iii) Management time: £750

The total compensation is therefore £298,450 and I award this amount.

69. This decision determines the substantive issues in this reference. A letter on costs accompanies this decision which will take effect when, but not until, the question of costs is decided.

Dated 25 February 2010

A J Trott FRICS

Appendix 1

Unit	Areas (SF)	Rent Paid (£)	Date of Next Review	Full Rental Value (£)		Comments
				PSF	Total	
1-3	1,818	16,200	02/04/05	2.75	5,000	Rent paid includes yard
Yard	6,458	–	–	0.35	2,260	
4	1,002	3,120	24/08/04	2.75	2,755	
5	932	12,000	01/08/05	2.75	2,563	Let together with Unit 8
6	1,146	3,120	01/02/05	2.75	3,151	
7	1,543	2,640	25/02/05	2.75	4,243	Rent paid reduced because of scheme
8	625	–	01/08/05	3.00	1,875	Let together with Unit 5
9	1,050	3,120	30/06/05	3.10	3,255	Includes Yard
10	362	2,400	30/09/04	3.00	1,086	Rent paid includes yard
Yard	4,036			0.35	1,413	
TOTAL		16,200			27,601	
					Say 27,600	

LANDS TRIBUNAL VALUATION

Estimated full rental value		£27,600	
x YP perp @ 10.75%		<u>9,302</u>	
			£256,735
Marginal income on Units 5 and 8			
Rent received:	£12,000		
Less estimated FRV:	£4,438		
Marginal income		£7,562	
x YP perp @ 20%		<u>5</u>	
			£37,810
Marginal income on Unit 4			
Rent received:	£3,120		
Less estimated FRV:	£2,755		
Marginal income		£365	
X UP perp @ 20%		<u>5</u>	
			£ 1,825
			£296,370
		Say	£296,500