ACQ/47/2005

LANDS TRIBUNAL ACT 1949

COMPENSATION – Compulsory purchase – acquisition of retail premises in connection with major city centre regeneration project – valuation method – whether total extinguishment or notional relocation – suitability of alternative premises – value of existing lease (rule 2) – disturbance (rule 6) – Land Compensation Act 1961 s.5 – compensation awarded £700,000

IN THE MATTER of A NOTICE OF REFERENCE

BETWEEN SUSAN CROWLEY and IAN RONALD GEORGE JARVIS Claimants
(Trading as CONTRABAND DISCOUNT STORES)

and

LIVERPOOL PSDA LIMITED and Acquiring
LIVERPOOL CITY COUNCIL Authority

Re: 1st and 2nd Floor Premises, 63 Hanover Street, Liverpool L1 3DY

Before: P R Francis FRICS

Sitting at: Liverpool Civil and Family Courts, 35 Vernon Street, Liverpool L2 2BX
on
10, 12, 13 and 17 – 19 October 2006

Vincent Fraser QC, instructed by C M Brand, solicitor of Heswall, for the claimants
David Elvin QC, Tim Mould QC and Charles Banner, instructed by Berwin Leighton Paisner, for the acquiring authority

The following cases are referred to in this decision:
Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 AC 111
Optical Express (Southern) Ltd v Birmingham City Council [2005] 2 EGLR 141
Halil v London Borough of Lambeth [2001] RVR 181

The following cases were also referred to in argument:

Kwik Save Stores Ltd v Stockton on Tees Borough Council LT ref ACQ/132/2002 (Unreported)
Lamba Trading Ltd v City of Salford [1999] 3 EGLR 186
Waters v Welsh Development Agency [2004] 2 P & CR 29
Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands [1947] AC 565
Bede Distributors Ltd v Newcastle upon Tyne Corporation (1973) 26 P & CR 298

DECISION

Introduction

1. This is a reference to determine the compensation payable by Liverpool PSDA Ltd and Liverpool City Council ("the acquiring authority" or "the council") under the Liverpool City Council (Paradise Street Development Area, Liverpool) Compulsory Purchase Order 2003 (the CPO) to Miss Susan Crowley and Mr Ian Ronald George Jarvis (the claimants), who jointly traded as Contraband Discount Stores from 1st and 2nd floor premises at 63 Hanover Street, Liverpool L1 3DY (the subject premises).

2. Mr Vincent Fraser QC of counsel appeared for the claimants and called Miss Crowley who gave evidence of fact relating to the claimants' business and the background to the claim. He also called Mr Paul Moran MRICS, a director of Mason Owen & Partners, who gave evidence of fact relating to the compensation awarded to Kwik Save Ltd who were head lessees and former occupiers of the ground and part of the first floor of 63 Hanover Street, and Mr Malcolm William Irving BSc FRICS MCIArb, joint senior partner in Irving Rice, Chartered Surveyors and Commercial Property Consultants who gave factual evidence relating to his search, on the claimants' behalf, for suitable alternative premises. Mr David Barry Lyons FRICS, Chartered Surveyor of Southport and Mr Charles Lazarevic BSc MBA FCA MAE, partner in charge of the Dispute Analysis and Investigations Team, Moore Stephens, Chartered Accountants of London, respectively gave expert valuation and accountancy evidence.

3. Mr David Elvin QC, Mr Tim Mould QC and Mr Charles Banner of counsel appeared for the acquiring authority and called Mr Michael John Burchnall MBE BA (Hons) MCD, Assistant Executive Director for Regeneration at Liverpool City Council who gave evidence of fact relating to the scheme and planning background, and Mr Guy Sutton Butler BSc (Hons) MRICS a Development Manager at Grosvenor Ltd, the council's development partner, who gave factual evidence relating to his company's involvement in the scheme, and the steps taken to relocate parties affected by the CPO. Mr Andrew Gerald Massie BSc (Hons) MRICS IRRV MCIArb, a partner in Keppie Massie, Chartered Surveyors of Liverpool gave expert valuation evidence, and expert accountancy evidence was given by Mrs Alison Ewing FCA, a Senior Manager in the Forensic and Investigation Services Department of Grant Thornton UK LLP based in Manchester.

4. On 11 October 2006, I undertook an accompanied inspection of the site of the former premises and external inspections of three of the properties offered to the claimants for potential relocation of the Liverpool business, one of the storage units considered suitable by the council, the temporary storage premises at Wallasey occupied by the claimants following closure of 63 Hanover Street, and external and internal inspections of the premises in Birkenhead that had been a further Contraband outlet until 31 May 2006.

5. Closing submissions in writing were received by 20 November 2006.

The Claim

6. Contraband Discount Stores had, prior to dispossession by the CPO, operated as a retailer of domestic products at discount prices from the subject premises and two other locations – basement premises at 242-246 Grange Road, Birkenhead and an out-of-town retail unit at Market Deeping, Cambridgeshire. The claim was predicated on the basis that despite the claimants' best efforts, it had been impossible to identify suitable alternative premises from which to trade in Liverpool that at the same time provided sufficient and accessible on-site or reasonably convenient nearby storage to service both the Liverpool and Birkenhead outlets. As a result, it had eventually become necessary to totally extinguish the businesses carried on in both of those locations (Liverpool closing 20 September 2004 with entry being taken 1 October 2004 (the valuation date for the purposes of this reference), and Birkenhead closing 31 May 2006), but the Market Deeping business continues.

7. Included with the copy of the Notice of Reference lodged with this Tribunal on 30 March 2005 and served upon the council, was a notice of claim (subsequently said by Mr Lyons to have been provisional due to the time constraints set out in the Agreement For Sale) in the sum of £1,057,696.24 (at which time Birkenhead was still trading). This included a claim for the value of the Liverpool lease of £25,000 under section 5, rule (2) of the Land Compensation Act 1961 ("the 1961 Act"), the remainder being disturbance items under rule (6). A revised and increased claim was submitted on 3 January 2006, accountants having had the opportunity to clarify a number of aspects relating to disturbance. There was a further revised claim, signed on the claimants' behalf by Mr Lyons and Mr Lazarevic on 15 June 2006, incorporating a trading loss for Birkenhead for the period between October 2004 and 31 May 2006.

8. By the date of the hearing some further revisions had been made (including a reduction in the value of the leasehold interest in the subject premises to £20,000), and the claim was made on two alternative bases. Firstly, that the closure of the Birkenhead store was a direct result of the CPO, and secondly, if it were to be found by the Tribunal that that was not the case, the losses relating to Liverpool alone. The claims can be summarised thus:

ITEM	Combined stores £	Liverpool only £
Value of Lease (Liverpool)	20,000	20,000
Disturbance:		
Pre-possession losses	171,040	171,040
CPO related costs	48,403*	91,218
Value of business	1,658,856	1,118,895
Deductions	(248,782)	(216,115)

Post possession losses	148,879**	121,597
Total, excluding leasehold interest	1,768,396	1,276,635
Total value of claim	1,788,396	1,296,635

* The parties agreed this figure on the combined store basis only if the Tribunal finds for the claimants in respect of the Birkenhead losses.

** This figure was agreed by the parties only if the Tribunal finds that all the Birkenhead post possession losses were a valid head of claim.

9. The acquiring authority based its principal case upon the assumption that the claimants could have relocated, and valued the compensation at £240,000; £120,000 relating to the value of the lease, and a like sum for disturbance, set out by Mr Massie as:

Professional fees for locating and acquiring alternative premises, say	£ 15,000
Removal costs	£ 25,000
Fitting out/special adaptations	£ 50,000
Double overheads	£ 10,000
Directors/staff time	£ 5,000
Temporary loss of profits	£ 10,000
Publicity and advertising etc	£ 5,000
Total disturbance	£120,000

10. If it were found that the claimants' Liverpool business could not relocate and that part of the business had to be extinguished (it not being accepted that any of the Birkenhead losses or its reason for closure were due to the CPO), Mrs Ewing summarised the council's position as:

Value of leasehold interest in 63 Hanover Street (Rule 2)		£ 120,000
Other losses:		
Pre-possession losses	£ 35,053	
CPO related costs	£ 48,403	
Value of the business	£ 356,200	
Deductions	£(351,568)	
Post possession losses	£ 121,597	
Total disturbance (Rule 6)		£ 209,685
Total value of claim		£ 329,685

Facts

11. Separate statements of agreed facts and issues remaining to be resolved were produced by the expert valuers and the accountants. From these, together with my inspections and the evidence, I find the following facts.

The subject premises

12. Hanover Street was a secondary trading location lying immediately to the south east of the main city-centre shopping area, and contained a limited number of shops on each side of the street, together with bars, a meeting house and some period buildings converted to offices. No 63 was situated on the north west side of the road, approximately midway between its junction with Lord Street, and Paradise Street. It comprised a 3 storey steel and reinforced concrete framed and glazed building, constructed in about 1963, and the whole was held by Kwik Save Stores Ltd under the terms of a full repairing and insuring headlease for 99 years from 24 June 1970. They occupied the ground floor as a discount supermarket, and a part of the first floor for an office and training room. The rent was geared to 92.5% of open market rental value and was subject to review at 7 yearly intervals. The review at 24 June 1998 was determined by an independent expert, appointed by the President of the Royal Institution of Chartered Surveyors, at an open market rental value of £100,000, and a rent payable therefore of £92,500 pa.

13. The claimants took an underlease of the remainder of the first floor, extending to 9,900 sq ft, for a term of 15 years from 16 September 1991 at a commencing rental of £19,750 pa subject to 5 yearly reviews. The review rent in September 2001 was agreed at £22,500 pa. The use was restricted to retail within Class A1(a) of the Town and Country Planning (Use Classes) Order 1987, with landlord's additional restrictions on the type of goods sold. The accommodation was plastered out, had fluorescent strip lighting and vinyl-tiled floors. It was centrally heated, with basic shopfittings and the principal access was by a single flight of concrete stairs off Hanover Street to the right of Kwik Save's main frontage. There was a 2 tonne goods lift (shared with Kwik Save and restricted by the lease in usage times) approached from a loading bay to the rear and there was parking in the service yard for one car. An area of the accommodation taken was used for offices, staff and stock rooms in connection with the claimants' business, and a shop window adjacent to the customer entrance was made available by the headlessee and used on licence.

14. Subsequently, following a period of informal occupation from 1992, the claimants entered into a co-terminous sublease of the whole of the second floor (extending to 12,950 sq ft) for a term of 5 years from 15 September 2000 at a rental of £15,000 pa. It was subject to a redevelopment clause (clause 5.15.2) which allowed for the determination of the lease in the event of a notice being served upon the landlord subsequent to the notice under section 65 of the Town and Country Planning Act 1990, that had already been served, in connection with the proposed city centre redevelopment.

15. Prior to the 2002 Liverpool Unitary Development Plan, 63 Hanover Street was within an area allocated for mixed uses within Classes B1, C3, A1 and D2.

Planning context

16. The council initially published its Consultation Draft Liverpool Unitary Development Plan (LUDP) in August 1994 and its Deposit Draft LUDP in April 1996. This contained policies designed to enhance the City centre's role as a regional shopping centre, reflecting guidance set out in Strategic Guidance for Merseyside (PPG 11) in 1988, which was subsequently superseded by Regional Planning Guidance for the North West (RPG 13) in 1996. Following an inquiry, the UDP inspector issued his report in February 1999. In parallel with this process, during which the inspector and the Government Office for the North West had identified shortcomings in the site selection process (per PPG 6) and that the issue of retail need had not been addressed, the council was developing its redevelopment strategy. Liverpool had fallen from 3rd to 17th in the CB Hillier national shopping centre rankings, it was clear that substantial regeneration was needed to the area and, with the availability of European funding in 1997, the council published "Ambitions for the City Centre", a five-year strategy. The resulting study, Liverpool City Centre Retail Strategy, published in February 1999 concluded that it was necessary to provide a shopping destination of sufficient scale and quality to attract residents throughout the catchment area and a comprehensive redevelopment that included a retail extension of c. 100,000 sq m was justified, appropriate and achievable. What became known as the "Bluecoat Triangle" (which included the north-west side of Hanover Street on which the subject premises were located) was then identified as the principal development area and was the focus for any expansion in the development of the Paradise Street Development Area Planning Framework (PSDA). The council adopted this strategy in March 1999.

17. In November 2000 the council resolved to modify the LUDP and to incorporate the PSDA proposals in the form of policies S1 and S2. The second UDP inquiry commenced in November 2001 and the inspector's report that was published on 8 May 2002 recommended that the council proceed with the modifications incorporating the PSDA, that policy S2 should be confirmed and that any piecemeal proposals for development would prejudice the potential success of a comprehensive development within that area. The revised LUDP was subsequently adopted in November 2002. Policies S1 and S2 read:

"S1 1. The City Council will protect and enhance Liverpool City Centre's role as a regional shopping centre. First preference will be given to locating and consolidating Class A1 retail development within the Main Retail Area (MRA) as shown on the Proposals Map.

S2 1. A comprehensive mixed-use regeneration scheme will be supported in principle on the defined Paradise Street Development Area (PSDA) as shown on the Proposals Map and on Figure 10.3.

2. Within the PSDA, a Principal Development Area (PDA) has been identified. The Council will support the provision of a substantial element of Class A1 comparison retail floorspace, up to 100,000 sq m gross (75,000 sq m net), focused upon the PDA subject to compliance with policy S1.

The PDA will be regarded as an extension to the MRA [Main Retail Area] once such development has taken place.

3. Within the remainder of the PSDA, a combination of uses will be permitted including leisure, hotel, offices, residential and retail uses, complimentary to the retail provision within the MRA. Such redevelopment will only be permitted where it:

    - supports and strengthens the MRA as extended by the development of the PDA,

    - enhances links between the MRA, the PSDA, the Waterfront Area and the Rope Walks Area and

    - does not prejudice the provision of Class A1 comparison retail floorspace within he PSDA as proposed in S2(2).

4. Proposals anywhere in the City which are likely to prejudice comprehensive development within the PSDA as proposed in this policy, or to harm the vitality and viability of the MRA as extended by the development of the PDA as proposed by this policy, will not be permitted.

5. Proposals for the comprehensive development of the PSDA will be required to make provision for a substantial amount of new and improved public open space, to include a significant urban park.

6. Proposals for the comprehensive development of the PSDA will be required to provide for design of the highest quality with the inspired use of quality materials, a safe and attractive user environment, the retention and renewal of buildings/structures/townscape which may be of architectural or historic interest, together with the enhancement of the setting of existing buildings, including the Bluecoat Chambers, having regard in particular to the requirements of policies HD3, HD5, HD9, HD10, HD11, HD12, HD13, HD14, HD18, HD19 and HD20.

18. During 1999 the council went out to competition to appoint a long-term development partner to take forward the emerging PSDA policy (in accordance with PPG 6 Guidance) and to deliver the required comprehensive City Centre redevelopment. From 49 initial expressions of interest, 14 of who provided detailed responses, a shortlist of 7 companies was drawn up and, following detailed submissions and technical workshops, Grosvenor Ltd (Grosvenor) was appointed in March 2000. The first PSDA planning application was lodged in January 2001 and was subject to a number of amendments before detailed consent (reference 010/0115) was obtained in December 2002. The council made the CPO on 28 March 2003 and, following an inquiry held between September and November 2003 at which objections were considered the CPO was confirmed, without amendment, by the Secretary of State on 18 May 2004. The subject premises were identified as Plot 124 on the CPO plan. The claimants had lodged objections, but withdrew following their agreement to the proposed Agreement for Sale (see paragraph 26, post). At the inquiry, the inspector was made aware of the need for some significant changes to the scheme, mainly in relation to the location of the proposed new bus

station, and a revised application was submitted to the council on 3 March 2004. Detailed consent (reference 040/0600) was obtained in July 2004.

The adopted scheme

19. The PSDA (CPO) development area is broadly triangular and extends to some 41.5 acres (18.15 ha). It is bounded to the north by the shops fronting the main historical shopping area of Church Street and Lord Street, and by part of Hanover Street, Canning Place and Strand Street (the latter abutting the Albert Docks). There is an extension to the east of Hanover Street (directly opposite the former subject premises) incorporating part of Seel Street. The development area originally comprised a wide variety of building styles, ages, sizes and heights and was principally in commercial use as offices and shops, although it also incorporated a religious meeting house, hotel, bus station, fire station, car parks and a park.

20. The scheme provides for a major mixed use regeneration project predominantly encompassing demolition and new build, but also incorporating a number of important and listed buildings that are to be retained and refurbished, including Bluecoat Chambers which lies immediately to the north of the former subject premises, on the opposite side of College Lane. The development comprises approximately 1,000,000 sq ft retail, the majority (but not exclusively) being within the Principal Development Area (PDA) (as identified in the LUDP) and known as the Bluecoat Triangle, within which the subject premises were located – the north side of Hanover Street forming the southern boundary of the PDA. There are to be 3 Anchor Stores, the principal one being a flagship John Lewis outlet between Paradise Street and South John Street, and a number of major shop units, trading over 2 floors, the development creating an extended retail circuit that will incorporate the Lord Street and Church Street frontages. In addition, the proposals include an outdoor market, bars, restaurants, cafes, two new hotels, relocation of the bus station to the western end of Hanover Street, 3 car parks accommodating 3,000 spaces, a multiplex cinema, significant residential and office accommodation, various public open spaces and a park.

21. Demolition of the subject premises was required to make way for a new building to house BBC North West (B1 use), a new Friends Meeting House (D2 use), A1 and A3 retail use at ground floor and parking. This was one of the first aspects of the scheme to be built, and is now occupied.

The claimants' business

22. Miss Crowley commenced her retail activities in 1982, first taking a single, and then subsequently a second concession in the Co-op store in Kirkby. Her business, which initially traded as 'Fayre Deal' and sold toys, fancy and household goods, DIY tools and Christmas decorations was established with the assistance of a loan from Mr Jarvis who with a partner traded from premises near Peterborough as Contraband Wholesale, which for a time became Miss Crowley's sole supplier. A second outlet was opened at Kensington Market, Liverpool soon afterwards. In 1984 Miss Crowley took approximately 1,000 sq ft at Grandfare Indoor Market, Birkenhead and when this closed for redevelopment she entered into a lease on 1

January 1989 of the basement premises at 242–246 Grange Road, Birkenhead. This unit extended to 4,620 sq ft and was accessed solely by a wide staircase leading down from the street. The range of items offered for sale was increased over a period of years to include tiles, wallcoverings, curtains and paints and an extended range of DIY products. The majority of stock continued to be supplied by Contraband Wholesale at Market Deeping, although some was sourced directly by Miss Crowley.

23. In late 1989 Miss Crowley commenced a search for suitable further premises in Liverpool City Centre, her criteria then being for a minimum of 5,000 sq ft at basement or first floor (with goods lift) at a 'low-risk' rental and with delivery access for 40 ft trailers. The agents Mason Owen introduced her to the first floor at the subject premises that were then, and had been for a long time, vacant. She commenced trading from there in mid-October 1991 and the principal products offered generally mirrored those available at Birkenhead but the lines were expanded due to the larger available area. With a heavy emphasis on the sale of Christmas decorations, the business was highly seasonal, with significantly increased turnover in the last three months of the year. As the business grew, from 1992 Kwik Save permitted Contraband to use, on a purely casual basis, the whole of the second floor for storage and, as noted above, formal terms were concluded in 2001. Even though it was used as the main stock storage facility for both the Liverpool and Birkenhead outlets, and to some extent for bulk goods to be sold through the Market Deeping store, the area was larger than required, and was never fully utilised.

24. In 1992, Mr Jarvis dissolved his Contraband Wholesale partnership (whilst retaining the Market Deeping premises) and became a partner, with Miss Crowley, in Contraband Discount Stores. In 1995, two additional units were acquired at Market Deeping, and a new Contraband outlet specialising in tiles, wallpapers paint, textiles blinds and curtains was opened. Stock was sourced in part from the subject premises, and part delivered direct. Although the claimants allege that there was some detrimental effect on that outlet due to the dispossession from Hanover Street, it does not form any part of this claim, and there is also no claim (under rule 2) for any value in the Birkenhead lease.

25. In August 2004, the claimants took a tenancy of Units 23/24 Uveco Business Park, 3,200 sq ft of modern storage space in Wallasey at £12,000 pa, to replace the storage areas being lost at the subject premises. These were subsequently vacated on 5 May 2006, shortly before the closure of the Birkenhead store.

Alternative premises

26. It was agreed that of the alternative premises allegedly available or offered to the claimants, only the following were worthy of consideration:

> Basement, 87 Hanover Street, Liverpool. These premises are located approximately 70 metres to the east of the subject premises, on the same side of the street, and on the junction of School Lane. They are close to the junction with Church Street and form part of the Hanover Building that housed the Neptune Theatre and the former Barracuda bar. They abut, but do not come within, the northeast corner of the PSDA.

The Kumar Building, 47 Ranelagh Street, Liverpool. Located on the corner of Ranelagh Street and Lime Street, opposite Lewis's Department Store, on the northeastern fringe of the city centre retail area.

Former Salters Furniture Store, 4-10 Pembroke Place, London Road, Liverpool. About 1 mile outside the city centre.

General

27. The claimants entered into the Agreement for Sale on 1 October 2004, which was the date of entry and is the agreed valuation date for the purposes of this reference. The consideration was £350,000 together with £23,837 in respect of professional fees and expenses. However, although nothing turns on the matter in respect of this determination, clause 11 provided:

> "11 **Costs**
>
> 11.1 The Buyer [Liverpool City Council and Liverpool PSDA] shall pay £2,000 plus VAT towards the Seller's costs incurred in connection with the withdrawal of the objection to the PSDA CPO.
>
> 11.2 Notwithstanding the Purchase Price contained in clause 3 nothing in this Agreement will prevent the Seller from pursuing a claim in the Lands Tribunal under the Lands Tribunal Act 1949 for the appropriate amount of compensation to be determined under the Land Compensation Acts PROVIDED THAT:
>
> 11.2.1 the Seller must submit its referral within a period of 6 months from the date hereof (time being of the essence) or the seller will be deemed to have accepted the Purchase Price in full and final settlement of payment for its interests in the Property; and
>
> 11.2.2 the Seller acknowledges and accepts that the Buyer by completing this Agreement does not accept if the Seller were to pursue a claim in the Lands Tribunal for compensation (as if its interest in the Property has been compulsorily acquired pursuant to the PSDA CPO) it would be entitled to compensation (excluding costs and interest) in excess of the Purchase Price.
>
> 11.3 If the Seller does make a referral to the Lands Tribunal and it is determined (or the parties agree) that the amount of compensation (excluding costs and interest) lawfully due would have exceeded the Purchase Price then the Buyer shall within 28 days of the determination by the Lands Tribunal (or agreement by the parties) pay to the Seller the difference between the Purchase Price and the compensation figure determined by the Lands Tribunal (or agreed by the parties) and the reasonable and proper costs incurred by the Seller."

The Notice of Reference was lodged with the Lands Tribunal on 30 March 2005.

Issues

28. The first issue to be determined is the value of the claimants' leasehold interests in the subject premises.

29. Determination of the compensation payable for each of the heads of claim under rule (6) disturbance is dependent upon two factors. Firstly, whether or not the claimants could, and should, have relocated the Liverpool store, or whether, due to there being no suitable or available alternative premises, they were forced to close down that part of the business. Secondly, if extinguishment was necessary, whether the Birkenhead store contributed, at the valuation date, to the value of the business extinguished or whether, as the acquiring authority argued, that part of the business was no longer viable, should have been closed by October 2004, and should therefore be ignored (except in respect of an accepted reduction in losses achieved by selling stocks through Birkenhead after Liverpool closed). The decision on Birkenhead also impacts upon the question of pre and post-possession losses and CPO related costs.

30. I deal with the issues, therefore, in the following order:

1. Value of leasehold interests in 63 Hanover Street – Rule (2)
2. Alternative premises: notional relocation or extinguishment
3. Birkenhead
4. Value of the business
5. Pre-possession losses
6. CPO related costs
7. Post-possession losses

1. Value of leasehold interests in 63 Hanover Street – Rule (2)

31. Mr Lyons, for the claimants, has revised his original figure downwards to £20,000, and Mr Massie, for the council, said they were worth £120,000. Mr Lyons set out his valuation thus:

First floor sales 9,900 sq ft @ £3 psf	£29,700
Second floor storage 12,950 sq ft @ £1.50 psf	£19,425
	£49,125
Rental value, say	£49,000

Less: rent payable	£37,500
Profit rent	£11,500
Y P for 2 yrs @ 10 & 3%, tax @ 40p	1.085
	£12,486

But say £20,000 to reflect short unexpired term and prospects of "key money"

32. Mr Lyons said that very short unexpired leasehold interests were notoriously difficult to value accurately, and in his experience potential assignees are often prepared to make a modest overbid to the formal valuation in order to secure the premises. He said his initial estimate of rental value, as at October 2004, was based upon the rent agreed at review in 2001 at £2.50 psf for the first floor, and £1.50 for the second. He thought the main retail floor might have increased to £3.00 at the valuation date, but the second floor, tied in as it was with the first would not have increased in value. He agreed with Mr Massie that there was only one comparable, that being the eventual letting of the basement and lower area at 87 Hanover Street to Buffet Star Chinese Restaurant in April 2005 at £60,000 pa rising to £65,000 pa in April 2007. Based upon his earlier understanding of the areas in those premises, he analysed the April 2005 rent as:

Basement	6,649 sq ft @ £8.25	£54,854
Lower area	1,233 sq ft @ £4.00	£ 4,932
		£59,786

Say £60,000

The increase in 2007 would represent figures of £8.95 and £4.50 psf respectively.

33. The location of 87 Hanover Street (which was also one of the properties considered for relocation by the claimants) was, Mr Lyons thought, significantly better for a range of retail or A3 uses than the subject premises, being only a few yards from what was unarguably the start of the best then existing retail trading pitch in Liverpool (Church Street, leading into Lord Street), and much more visible from it. However, there was a long dead frontage along Hanover Street before no. 63 was reached and whilst it was convenient for public transport and taxis, the range of occupiers likely to be interested in that location would be much less. Also, the letting of no. 87 was 6 months after the valuation date (although he agreed there would have been little movement in values over the period), was at a figure that was clearly agreed in the scheme-world and was for a very much smaller area.

34. Whilst Mr Lyons accepted that 87 Hanover Street was the only comparable transaction available to be considered, he stressed that the rental terms agreed would have reflected the fact that the Grosvenor scheme was, by then, well under way. He agreed in cross-examination that although any increase (or decrease) in rental value of the subject premises due entirely to the scheme had to be disregarded, the market would have been aware of the underlying planning strategy which had been described by Mr Burchnall and which could be anticipated to lead to a more vigorous market in the area. He considered that the scheme and no-scheme worlds were distinguishable and that there would be no guarantee that a similar scheme would come about. He later agreed that there would be no material distinction between them so far

as the relevance of the 87 Hanover Street transaction to the rental value of the subject premises was concerned, and he agreed that it was fair to say the rent agreed on 87 was a reliable proxy for valuation purposes in relation to the subject premises in the no-scheme world. He said he was of the view that that rental needed to be discounted by approximately two-thirds to reflect all the differences he had listed, and he said that that view was supported by the fact that the rating assessment for 87 was approximately double that which would have applied to the subject premises.

35. He said that the regeneration proposals for the area were known about in 2001, when the first floor rent review was negotiated, and that fact also needed to be taken into account in determining how much, if at all, rents in the area had increased between 2001 and 2004. It was also relevant that prior to the letting, 87 Hanover Street had been empty for a number of years (apart from the temporary occupation by Gees Bathrooms) and the licensed premises on the upper ground floor had gone into liquidation. In his view, Mr Massie's assessment of the rental value of the subject premises at £92,500 pa, which represented a 2.67 fold increase from 2001 was not supported by evidence, either in increases in rental values generally or in comparison with the tone of the rating lists. However, Mr Lyons did acknowledge that his reference to rating assessments was of no particular assistance to the Tribunal, particularly as the draft assessment at £52,500 for the 2005 list, which was never adopted because the building had been demolished, appeared to have been incorrectly calculated.

36. In response to Mr Massie's attempts to analyse the compensation figures that had been agreed between the council and both Kwik Save and the freeholder, Threadneedle, and his own re-working of Mr Massie's figures, Mr Lyons accepted that, as had been agreed during the hearing, they were "horse deals" which were not negotiated in accordance with the compensation code, and so little weight could be attached to them. However, he did say that if the rental value of the whole of 63 Hanover Street predicted for the possible 2006 lease renewal was as high as Mr Massie said it should be, Threadneedle would have never agreed to a figure of £1,850,000 for the freehold. It would, he said, have been worth nearer £3 million.

37. Mr Massie produced a report dated 28 July 2006 in which he considered the claimants' leasehold interests to be worth £120,000. He said that the main area of disagreement between himself and Mr Lyons was the discount to be applied to the rent that had been achieved on the letting, admittedly several months after the valuation date, of 87 Hanover Street. He agreed that it was the only available comparable, although he said he had undertaken an extensive investigation of the non ground-floor retail market in forming his views, but did not produce any details. No assistance could be derived from the rating assessments on the subject premises, he said, nor from the review negotiated on the first floor or the new lease of the second floor in 2001. The history showed that the first floor had been vacant for many years before Contraband took it, and Kwik Save, as landlords, would have been keen to derive any income possible from that space. Similarly, he said, although there had been another interested party in the second floor whilst Contraband was negotiating for it, when that interest fell away, Kwik Save would have known that they would be unlikely to get anyone else with the impending redevelopment. Thus, the passing rents could not, in his view, be taken to reflect the current market values in 2001. Indeed, he said, with the redevelopment policy in place by then, and doubts about whether or not the building would be needed, that might have served to depress rental values.

38. The newly negotiated rising rent on 87 could be analysed at about £8.50 psf for the retail element, and about £5 psf for the storage area. In his view, a total discount of 30% rather than Mr Lyons' 60% would be appropriate to reflect the subject premises poorer location and prominence, its customer access and its small window display area which was available only on licence. This would give a rental value of £5.95 psf, say £6. He said the storage at the subject premises, being that much larger and subject to a separate lease warranted a larger discount from the small storage area at 87, and he put that at £2.50 psf. His valuation of Contraband's premises therefore was 1st floor retail area £60,000, and 2nd floor storage £32,500 – total £92,500 pa. Therefore, the claimants should have had at least that figure in mind as the amount to which the rent was likely to increase in 2006 if they had stayed in the subject premises, when comparing the potential alternatives.

39. Mr Massie's calculation was:

Estimated Rental Value (ERV)	£ 92,500
Passing rent	£ 37,500
Profit Rent	£ 55,000
Y P 2 yrs @ 6.5%	1.8026
	£100,133
Capitalised profit rent, say	£100,000
Plus "key money"	£ 20,000
Total	£120,000

40. Mr Massie accepted in cross-examination that the rental value of the whole of 63 Hanover Street was determined by an independent determination in 1998 at £100,000, although there was a clause in Kwik Save's headlease that the rent they paid was 92.5% of open market value - £92,500, and in his view £100,000 was a market rent at that time. He said that he thought rental values had increased between 2001 and 2003 by about 20% and by another 20% between 2003 and 2005, but accepted that he had no evidence to support that contention. However, in attempting to analyse the compensation of £1,250,000 paid to Kwik Save in October 2003 he said he considered the rental value of the whole building at that time to have been £200,000, which was double the agreed 1998 figure. Some of that increase, he acknowledged, would have been due to the emerging redevelopment proposals although it was not possible, in his view, to say precisely what impact the scheme had had.

41. Mr Burchnall said he had been closely involved with the evolution of the council's strategies to achieve the comprehensive regeneration of Liverpool city centre since 1999 including the PSDA planning framework and gave evidence at the Public Inquiries in 2001 and 2003. He set out, in considerable detail, the background to the scheme and said that the adopted PSDA policy was not scheme specific. Having regard to the considerable developer interest (before Grosvenor was chosen as the preferred development partner), he said there was a strong likelihood that another scheme would have come forward that would have resulted in the redevelopment of 63 Hanover Street. In terms of current policy allocations, he said that the LUDP indicated that the site of the subject premises lies within the principal Development

Area of the PSDA which was allocated for development in accordance with the provisions of policy S2. That policy would have emerged with or without the PSDA scheme and would remain in force whether or not the Grosvenor proposal had proceeded. Therefore, he said, in a no-scheme world, policy S2 and its supporting text would have still applied to the site in question. It followed, therefore, that planning permission for piecemeal development would not have been granted.

42. In cross-examination Mr Burchnall agreed that in the absence of the adopted CPO scheme, any other significant redevelopment in the relevant area would not come forward without CPO powers. The involvement of the council would be required particularly due to the fragmentation of ownerships within the proposed redevelopment area. He accepted that planning policies were revised to support the PSDA scheme as it developed with policies S1 and S2 in the UDP being modified from those which had originally been adopted, in accordance with the council's desire to get away from the former piecemeal approach to city centre regeneration. He said that whilst the PSDA scheme was specific to and had been developed in association with Grosvenor, if they had dropped out, or had not been considered suitable, it was very likely that one of the other developers, such as Hammerson, who had been in the initial beauty parade, would have come forward with a scheme that was very similar, and that would almost certainly have included Hanover Street. It was the council's policy that they would have only moved forward with a development partner that could deliver the major city centre regeneration that was required.

43. In submissions, counsel for the respondents said that it was the practice of the Lands Tribunal to value by reference to comparable open market transactions, and the 2005 letting of 87 Hanover Street was the only reliable evidence available. The adjustment of 30% made by Mr Massie to reflect the subject premises' comparative deficiencies was realistic, whereas Mr Lyons' adjustment at 60% was so great that it was tantamount to asserting that 87 was not a comparable at all. The 2001 rent review of the first floor and new second floor lease on the subject premises were not reliable guides for establishing rental values 3 years hence, by which time the regeneration policy framework was much more clearly defined. Rents in 2003 would reflect the unquestionable benefits that regeneration would bring to the city centre, whether or not it was the PSDA proposal that was adopted. No weight could or should be given to the deals agreed with Kwik Save or Threadneedle as these were acknowledged to be 'horse deals' and, as was clear from Mr Butler's evidence, those agreements embraced commercial considerations that extended beyond merely applying the relevant provisions of the compensation code.

44. For the claimants, Mr Fraser said that the chronology of events relating to the scheme underlying the acquisition, as set out by Mr Burchnall, revealed that planning policy in the area was being revised to support the Grosvenor scheme. There was no evidence to support the contention that in the absence of the scheme the policy background would have been the same. It was not sufficient, he said, to say that a very similar scheme by another name would have come forward. Indeed, he said that the case that had been put forward by the council to the Secretary of State in support of the CPO in November 2003 clearly showed that there was no alternative to the scheme that was being proposed. Mr Fraser quoted several passages from the council's stated case as summarised in the Inspector's report including:

"...there are no alternatives to the scheme waiting in the wings..." (para 16);

"the scheme has emerged as a result of concerted major efforts by the Council, its advisors and Grosvenor over some 5 years, and has involved the devotion of considerable resources to doing so. There is no alternative to the scheme. The only other major scheme which had emerged in the last 15 years was, the Walton scheme, was decisively rejected." (Para 34i); and

"the Secretary of State can be sure that there are no alternatives to the scheme as a whole" (Para 37ii).

These comments clearly demonstrated, he said, that the council believed no development would come about in the absence of the scheme, and it was very forcefully making the case that the development was only occurring because of the scheme. Any argument, therefore, that the rental value of the subject premises should be increased to reflect the underlying planning background should be treated with the utmost caution. In response to this point, Mr Burchnall said that was not what was being said at all. There were no alternatives in the pipeline, and bearing in mind the time, effort and cost that had gone into getting the scheme to that stage, no other proposals were being considered. That was not to say that in the absence of this specific scheme, no other developer could have come up with something similar.

Conclusions – value of leasehold interest

45. There was no dispute as to the identity of the scheme. However, I do not think it right to approach the matter, as the acquiring authority did, that in the absence of the Grosvenor scheme a similar scheme, based on the same underlying planning policies and requiring the use of compulsory powers, would have emerged. I see no reason to think that any such scheme would not have involved the acquisition of the subject property, so that to value the land on this basis would effectively be to take the scheme into account rather than to disregard it. In my view, in the absence of this or a similar scheme, the likelihood is that some redevelopment within the PSDA would have occurred, but the regeneration of the area would have been more gradual. As a result the value of 87 Hanover Street (which was agreed to be the only comparable) would have been less at the valuation date than it was when the rent was agreed in the no-scheme world, and the value of no 63 would similarly have been less. I attach little weight to the apparent concession made by Mr Lyons in cross-examination that the value would have been approximately the same in the scheme and no-scheme worlds since that seemed to be related to a no-scheme world that was both similar to the scheme world and would have involved the use of compulsory powers. I am in any event satisfied that the slower pace of development in the no-scheme world that I have referred to would have reduced the value of no 87.

46. Mr Massie used only no 87 as his basis for assessment of the rental value of the subject premises in October 2004, but Mr Lyons also considered Contraband's 2001 review rent and new lease, together with the rating assessments, although he did accept that the latter was of little assistance, other than to support the 2001 settlements. I attach no weight to the rating assessments. I see nothing to support Mr Massie's view that the rents paid by Contraband, either when they took the first floor, or upon review were anything other than at market value. The fact, for instance, that that floor had been empty for many years prior to Contraband taking

it suggests a lack of demand that would have been reflected in any rental agreed. Similarly, the second floor had produced no income to the head-landlord for "over 30 years" and the fact that the claimants were prepared to take it must have been a bonus to Kwik Save in helping to defer their occupational property costs. Indeed, as Mr Massie said, if it had not been for the claimants, there was every likelihood it would have remained empty, especially with the possibility of an impending CPO. I do therefore think that, whilst comparable transactional evidence, if it is available, is the best evidence, the passing rents which I conclude to have been at market rates, must provide a helpful base check as to the level of rental values in 2001.

47. Looking at 87 Hanover Street, I agree with Mr Lyons that, as a trading location, it is significantly better than that of the subject premises and would be likely to appeal to a much wider range of occupiers as a result. I do accept that there is no reason to conclude that the fact it had planning permission for A3 restaurant use necessarily gave 87 a value any higher than A1 retail, and that had the premises been suitable for the claimants, they could have negotiated a similar rental to that which is now being paid by Buffet Star. The draw to the subject premises for the claimants would have been (as admitted by Miss Crowley in her statement) the occupation of the ground floor by Kwik Save as they are both in the discount retail business, although for a different range of goods. That draw would not apply, in my view, to many other potential occupiers, and certainly not to restaurants. Thus the market would have been much more limited, and that must be reflected in rental values.

48. In attempting to analyse the Kwik Save and Threadneedle deals, Mr Massie stated that the rental value of the whole of 63 Hanover Street had doubled between 1998 (when the Kwik Save rent review was settled) and 2003. I find I can attach no weight to his conclusions on that subject particularly as it has been agreed between the parties that those were horse deals. Indeed, as Mr Fraser pointed out in submissions, if the rental values were as high as Mr Massie suggested they were, Mr Butler's argument that Grosvenor paid more than market value for the leasehold and freehold interests would be unsupportable.

49. It is clear that a common-sense approach is required. In the circumstances, it would be right, I think, to discount the achieved rent on 87 Hanover Street by say 20% to reflect a no-scheme world letting – giving £48,000pa. This puts the one comparable and the subject premises in a like for like position for the purposes of making any adjustments to reflect the other factors such as poorer location, lack of visibility, larger size etc. In that regard, in general I prefer Mr Lyons' arguments, and am of the view that the disabilities of the subject premises warrant a very significant discount from values that apply in the location of 87. However, he argued for a 60% deduction which, bearing mind how close the premises are together, seems to me to be a little high. Nevertheless, in my judgment the subject premises certainly warrant a higher discount than the 30% suggested by Mr Massie, and doing the best I can, I conclude that in terms of rental value, the subject premises would be 50% less than 87. Assuming the adjusted rental values for 87 to be £6.80 for the trading floor (£8.50 less 20%), and £3.60 for storage, the calculation thus becomes:

First floor 9,900 sq ft @ £3.40	£33,360
Second floor 12,950 sq ft @ £1.80 psf	£23,310
Rental value say	£56,500

Less rent paid	£37,500
Profit rent	£19,000
YP for 2 yrs @ 10 & 3% tax @ 40p	1.085
	£20,615

The expert valuers agreed that an element of key money was applicable, Mr Lyons adding 60% and Mr Massie adding 20% and, in the absence of any comparable evidence in this regard, I split the difference between the two at 40% to give an additional £8,246. The total becomes £28,861, which I round to £29,000.

50. The increase in rental value of £19,000 pa between 2001 and 2004 represents approximately 50%, which I consider to be a fair reflection of the regeneration expectations that the market would have perceived in the no-scheme world.

51. I therefore determine the compensation under rule (2) in the sum of £29,000.

Rule 6 Valuation: approach

52. The basic principles upon which a claim for disturbance under section 5, rule (6) of the 1961 Act are to be considered were authoritatively examined by the Privy Council in *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 where Lord Nicholls held (at 126):

> "The application of the general principle of fair and adequate compensation bristles with problems. As useful guidelines there are three conditions which must be satisfied. First, it goes without saying that a prerequisite to an award of compensation is that there must be a causal connection between the resumption or acquisition and the loss in question...
>
> The adverse consequences to a claimant whose land is taken may extend outwards and onwards a very long way, but fairness does not require that the Acquiring Authority shall be responsible ad infinitum. There is a need to distinguish between adverse consequences which trigger a claim for compensation and those which do not. ...[A]s a matter of general principle, to qualify for compensation the loss must not be too remote. That is the second condition.
>
> Fairness requires that claims for compensation should satisfy a further, third condition in all cases. The law expects those who claim recompense to behave reasonably. If a reasonable person in the position of the claimant would have taken steps to eliminate or reduce the loss, and the claimant failed to do so, he cannot fairly be expected to be compensated for the loss or the unreasonable part of it. Likewise if a reasonable person in the position of the claimant would not have incurred, or would not incur, the expenditure being claimed, fairness does not require that the authority should be responsible for such expenditure. Expressed in other words, losses or expenditure caused by, or be the consequence of, or be due to the resumption."

Based upon these general principles, Lord Nicholls went on to set out the following questions that govern the issue of whether rule (6) compensation should be made on the basis of extinguishment or relocation (at 128):

> (1) Can the business be relocated, or has it effectually been extinguished? Most businesses are capable of being relocated but exceptionally this may not be practicable; for example, another suitable site may not exist. If the business is not capable of being relocated then perforce compensation will have to be assessed on the extinguishment basis. (2) Does the claimant intend to relocate? The claimant must have reached a firm decision to relocate his business, and he must be reasonably assured that he will be able to do it. (3) Would a reasonable businessman relocate the premises?"

53. The acquiring authority bears the burden of proving that, on the balance of probabilities, the claimants have failed reasonably to mitigate their losses (see *Bede Distributors Ltd v Newcastle upon Tyne Corporation* (1973) 26 P & CR 298), by not reasonably pursuing opportunities to relocate their business.

2. Alternative premises – claimants' case

54. Miss Crowley produced a comprehensive and detailed witness statement setting out her background in retailing and the development of the Contraband business, including business plans, premises requirements, staffing and inter-branch relationships, suppliers, product lines and details of the competition and challenges faced by the operation. She then described the effects of the impending and subsequently confirmed CPO both prior to and following the closure of the Hanover Street store, her search for suitable alternative premises and the alleged effects upon the Birkenhead business. She said that since taking occupation of the subject premises in 1991 the turnover there grew steadily and due to the size of the unit they had been able to expand the ranges of stock offered in some key areas, notably DIY products, tiles, wallpaper, soft furnishings and Christmas lines. Indeed, she said, they effectively cornered the Christmas decorations market in Liverpool city centre, this being the reason for the substantially increased turnover (and profitability) in the last 3 months of each year. Liverpool was the main office for the three branches (including Market Deeping) and, with the advent of the additional second floor accommodation, which she accepted was larger than they actually needed but was realistically priced and convenient, it became the main warehouse for stock. The availability of a large amount of storage space led to cost savings on stock purchases as, for example, Contraband was in a position to take Christmas stock from suppliers at any time from July onwards. A van driver was employed at Liverpool who was largely responsible for inter-branch stock transfers along with deliveries of mainly tiles and furniture for both Liverpool and Birkenhead customers. Miss Crowley said that she had been keen to formalise the casual arrangement Contraband had with Kwik Save for use of the second floor storage area as the accommodation was convenient, there was good access for 40 foot delivery vehicles to a proper loading bay, and a goods lift. Whilst the use of the lift was restricted under the terms of the lease of the first floor, in reality Kwik Save hardly used it (they only used part of the first floor for an office and training room), and due to her good relationship with the manager, they were allowed access virtually whenever they wanted it. In fact, Miss Crowley said, Kwik Save even arranged for the formerly shared access to the lift to be closed off for security purposes.

55. In Miss Crowley's view, on-site storage facilities resulted in significant cost savings over external warehousing, as experience had proved when they rented space for a short time in 1998 on the 6th floor of Gostins, premises that were located a short distance away on the other side of Hanover Street. Also, as part of the potential relocation considerations, she had produced schedules that demonstrated the dire effects the additional costs of external or remote storage would have on profitability. Miss Crowley explained that up until 1999, she and Mr Jarvis oversaw the day to day running of the three stores, but then Ms Naomi Runciman, who had been manager of Birkenhead was promoted to General Manager and Buyer. Ms Bridgette Gallagher was made branch manager of Liverpool and Ms Claire Lloyd became manager of the office and administration function at Liverpool and assistant buyer (to Ms Runciman). She was also charged with investigating the internet as an alternative market place. Each of the branch managers had day-to-day responsibility for their own store, and both Ms Runciman and Ms Lloyd were expected to work closely with them to achieve parallel strategies of increasing the breadth and style of stock and expand the Christmas range to make it the biggest and best in Liverpool city centre. A close relationship existed, Miss Crowley said, between Liverpool and Birkenhead due principally to their close proximity to each other. This was helpful in respect of general management matters, the ability to transfer staff and warehousing and stock control. Whilst margins had been affected by the new staffing structure, turnover and profitability increased and, Miss Crowley said, she was confident that despite Ms Runciman's and Ms Lloyd's relative lack of experience, margins would be restored. The objective of appointing competent staff to these roles was that they would manage and operate the business on hers and Mr Jarvis' behalf, and it allowed Miss Crowley to spend more time with another of Mr Jarvis's business interests, although she worked full time in the Contraband business during the busy Christmas period. She also said that she had planned to semi-retire in 2007, but in cross-examination explained that that was as much to do with training staff to be independent, as about an actual desire to withdraw.

56. As to the PSDA scheme, Miss Crowley said that she first became aware of the proposals for a major city centre redevelopment in 1999, and asked Mr Irving to monitor the situation on her behalf. In 2002, a model of the prospective scheme went on display, and this showed the site of the subject premises as "BBC Radio Merseyside". The first Statutory Notice regarding the PSDA proposals was received on 22 December 2002, the day before planning permission was actually granted. Mr Irving responded to this notice on Contraband's behalf on 10 January 2003, and in February he was formally instructed to seek alternative premises. In his letter of confirmation, Mr Irving said that "the objective is to find similar retailing and storage accommodation on similar lease terms to those existing in your current arrangement with Kwik Save." He distributed, on the agents' network, a flyer seeking a minimum of 10,000 sq ft trading area on part ground, basement or upper floor on a main arterial route or in a busy pedestrian location, and preferably with goods lift and substantial storage.

57. Miss Crowley said that although ideally she would have liked to replicate exactly what she had at the subject premises, she realised she would probably have to compromise, and her "absolute bottom line" was for a total of 9,000 sq ft – 6,000 sq ft retail, and 3,000 sq ft on-site storage. Whilst sufficient on-site storage was, of course, preferable, she accepted that if there were no choice, off site locations for storage would have to be considered. Indeed, after the initial search for alternative premises had not borne fruit, and following discussions with Mr Butler and Mr Irving in October 2003, Miss Crowley undertook an exercise to cost the remote storage implications. In summary, she said that increased wages and rental costs, the need for

an additional delivery vehicle and the anticipated loss of sales caused by inevitable delays in re-stocking, especially over the Christmas period, would result in extra costs of up to £149,000 pa. She said she had been shocked at the potential effects of such a move and this could potentially put the business into deficit. She accepted that the figures she had produced were only broad estimates, but she had tried to draw a fair comparison as she had taken the 63 Hanover Street rent to be at the 2003 level estimated by Mr Irving, rather than the rent actually paid. However, she admitted she had not made an additional allowance for the fact that it could be anticipated there would be a rent increase at 63 Hanover Street in September 2006 if she had remained in occupation. As it transpired, Miss Crowley said that they had had to take remote storage (at Units 23-24 Uveco Business Centre, Wallasey) to store the stock from Liverpool after it closed, and to continue to service Birkenhead and Market Deeping.

58. Miss Crowley said that the fact that some 42 acres of the city centre was being substantially redeveloped meant that a large area that could otherwise have contained suitable alternative trading locations was unavailable, and as to their business relocating into the new scheme, she said Mr Butler had made it clear their business was not one of those that the city was trying to attract into the scheme, and the need for a large amount of on-site storage would, as Grosvenor's former agents had indicated, "be an inappropriate use of retail space". Of those potential premises that were put to her, the first one that was seriously considered was the basement at 87 Hanover Street. This was inspected in July 2003 and whilst it was acknowledged that it was in a marginally better retail location, being about 70 metres nearer to the main pedestrian shopping area, she said it was not better for Contraband. It was very much smaller than the subject premises – both in respect of retail area (6,200 sq ft useable basement area after allowing for some dead space around the entrance to the goods lift) against 9,900 sq ft. The additional "mezzanine" area to the rear, described in the agent's particulars as 1,233 sq ft, but subsequently re-checked by Tushingham Moore at 969 sq ft, which the council had suggested would be suitable for storage, was not appropriate for anything other than a small amount of stock. It was at the opposite end of the shop from the goods lift, and was approached down a number of steps that would make the storage of heavy items (such as pallets of tiles) impossible in terms of health and safety issues. Whilst the lift itself was suitable, it was located on the corner of Hanover Street and School Lane where there were unloading restrictions and there was also a taxi rank right outside that would make unloading difficult, if not impossible. At a total useable area of just over 7,000 sq ft, the space did not even come close to her absolute minimum requirement.

59. Following her initial inspection, at which time she had been advised the rent required would be £80,000 pa, although this was soon amended to circa £60,000, Miss Crowley prepared a hand-written note for Mr Irving, noting a number of areas of unsuitability, including its shape, the fact that there was then no separate customer entrance and stairs [subsequently provided to the eventual tenant by the landlord] dampness and the need for refurbishment and particularly its size. She concluded

> "I would think that the smaller retail space combined with the loss of storage would lead to a fall in turnover and profits, balanced against a huge increase in rent and possibly rates, would result in a loss position".

In her supplementary statement, provided just before the hearing, Miss Crowley had compiled a number of tables indicating the effect on profits that moving to smaller premises would have

both on the basis of reducing stock levels dramatically and using the lower area for storage, or alternatively utilising remote storage units at Clegg Street or Sandon Industrial Park, as had been suggested by Mr Massie. The resulting likely reduction in turnover against substantially increased costs meant the business would no longer be economically viable. She concluded that it would be necessary to increase sales per square foot (on a like-for-like basis) by 45% before a profit would even be made. These estimates were set against the Contraband figures for Liverpool for the 2002–2003 financial year, where net profits were over £146,000. A reasonable business-person, she said, would regard relocation to 87 Hanover Street, utilising remote storage facilities, as totally inappropriate. In cross-examination, Miss Crowley accepted as a fact that both Birkenhead and Market Deeping had, effectively, always had remote storage but she was not trying to replicate those outlets in Liverpool city centre. It was the availability of a large amount of on-site storage at reasonable cost that made the figures work, and the figures that she had calculated remote storage would cost were, she confirmed, based upon the assumption that Birkenhead would continue to trade.

60. Details of premises at 47 Ranelagh Street, Liverpool ("the Kumar Building") were sent by Tushingham Moore to Mr Irving in December 2003, having been identified by Grosvenor as a possibility for Contraband, and Miss Crowley said she inspected them on 9 January 2004. The premises had initially been described as having 16,451 sq ft, of which 3,813 was ground floor retail and 3,382 first floor retail plus a basement servicing area. Thus the remaining 9,256 sq ft would have been made up of second and third floor storage, but Miss Crowley said the premises were nowhere near as large as that. It was agreed between the parties during the hearing that that was, indeed, the case but no accord could be reached as to the actual areas that may have been available. Miss Crowley said that of the 7,195 sq ft to which she had been advised the ground and first floor extended, she calculated the maximum useable retail space would have been no more than 6,800 sq ft due to the curved nature of the frontage. She said that the sales areas appeared much smaller than described, and whilst it was accepted that there was a large amount of storage on the upper two floors, those areas did not have adequate access, the passenger lift which served all floors not being suitable for pallets or large/heavy items. The configuration in the basement was such that the lift was not, in any event, easily accessible from the loading bay. The basement loading area, which was about 510 sq ft, or 720 sq ft if a dividing wall onto a further area were removed, was not large enough to store pallets of tiles whilst still allowing access for other deliveries. She also said that access for delivery vehicles was inadequate, but accepted in cross-examination that it was as good, if not better than at the subject premises. Miss Crowley was also concerned about the condition of the building, especially the top floor, where there was evidence of leaks to the roof. The location was not as high profile as 63 Hanover Street and there was also a question about the availability of the premises, she having been advised when viewing that as A3 (food) consent had been obtained the lessee was hoping to dispose of the premises to a restaurant user, at a premium of £200,000. There was confusion relating to the passing rent, Mr Massie referring to it as £50,000 pa, Mr Butler saying it was £32,500 pa and the lessee's agents quoting £38,000 pa. There were also some problems regarding the lease, and a question over whether the underlessee was, indeed, in a position to assign.

61. Trading over 2 floors was a concept that did not appeal to the claimants, as there would be a need for extra staff and security, and Miss Crowley anticipated that turnover could fall. With the upper floors being unsuitable for her requirements the remote storage problems and additional costs would be the same as if they took 87 Hanover Street. She carried out an

exercise to establish the extra occupation costs that a move to the Kumar building would entail. Based upon a rent of £38,000 pa, a premium of £100,000 (that, apparently, being the revised figure required after the proposed letting to a Chinese restaurant fell through – that restaurant having eventually taken the 87 Hanover Street premises), together with estimated costs of £7,000 pa towards repairs and maintenance gave a total of £65,000 pa or £9.15 per sq ft. With the subject premises costing £2.15 per sq ft on the £22,500 pa rental that was being paid, this was four times as much. Even at Mr Massie's estimate of the 63 Hanover Street (retail area) rental value at the valuation date of £60,000 pa (£6.06 per sq ft) this was still 50% more. By the time the additional costs of remote storage were taken into account, the total additional overheads would be £147,000 pa. Again, she said, this would need a 33% increase in sales just to achieve a profit of just £9,500 pa. In cross-examination, Miss Crowley accepted that Mr Butler, if he had become involved when she first viewed the Kumar building, may have been able to sort out the lease and rent problems, but she said she had not been advised of this possibility at the time.

62. The former Salters furniture store that fronted London Road, about 1 mile outside the city centre was, Miss Crowley said, wholly inappropriate, and the council accepted that this was, indeed, the case. Miss Crowley also listed a considerable number of other properties that had been viewed from late 2002 to the present day, but even now, she said, nothing remotely suitable had come forward, hence the claim being made on the basis of total extinguishment of the business. The original observation that Mr Butler had made to Mr Irving in February 2003 about the difficulties there would be in relocating the business had proved to be accurate, she said, and she did not accept that the fact she employed solicitors, accountants and Mr Lyons at an early stage meant the claimants never intended to relocate. She had responded to all the suggestions that had been made both by Grosvenor and by Mr Irving, and indeed, it was her who set the ball rolling as soon as it became apparent they might have to move. Mr Butler had a file note dated 30 January 2003 that said he would be happy to discuss relocation, but that his preference was for early summer. As it transpired, the claimants only received 12 weeks notice of the actual date that the premises would be needed, and upon which they would be required to vacate. Miss Crowley said that it was obvious from Mr Butler's statement that he had a lack of understanding of Contraband's business and modus operandi. Furthermore, she felt that it was only in hindsight that the council was now saying that both 87 Hanover Street and the Kumar building were suitable as, at a meeting in September 2003, 87 Hanover Street was not even mentioned (by him), although he said they [the council] were not able to consider extinguishment because suitable premises were likely to become available prior to possession being required. This, she said, indicated that, at that time, the council accepted that 87 Hanover was unsuitable. On the question of alternative premises, Miss Crowley concluded by saying that having sought professional representation and advice, pursued all potential opportunities, considered the implications of disaggregated storage and even continued a search after dispossession, the claimants had behaved entirely reasonably.

63. Whether or not suitable alternative premises had become available, Miss Crowley said that business losses had been incurred that had been entirely related to the impending CPO. Both Ms Gallagher and Ms Lloyd resigned, and left in February 2003, and they had provided witness statements (although they were not called) indicating that the uncertainties for the future of the Contraband store were contributory factors. Ms Lloyd had been approached by one of the company's suppliers, and Ms Gallagher's reasons were principally personal. She returned part-time in May 2003, and resumed her managerial role for 4 days per week in

January 2004. These resignations, Miss Crowley said, had a profound affect upon the business and the rest of the staff, and eventually affected profitability. Difficulties had been encountered recruiting suitable replacements, and with no sign of suitable alternative premises, staff morale reduced as the months progressed. In cross-examination, it was put to Miss Crowley that turnover had started to fall in January 2003, although in June and October of that year it was actually higher than in the corresponding months the previous year. It was more likely, it was submitted, that the reduced income was due to competition than loss of staff, one of who had returned after only 3 months away. She said she did not look at things in the same way as accountants, and was speaking from personal experience as to the difficulties that had been encountered.

64. Regarding the losses claimed in respect of the Birkenhead store, Miss Crowley said she vehemently disagreed with the suggestions by Mr Massie and Mrs Ewing that that part of the business was no longer viable by the date upon which Liverpool was required by the council, and should have been closed at the same time or even sooner. Whatever the state and performance of the Birkenhead business, Miss Crowley stressed that the very fact it remained open for a further 20 months after Liverpool closed enabled otherwise very substantial losses to be mitigated. In September 2004, they were left with £150,000 worth of stock, the majority of which was sold through Birkenhead rather than, as the only alternative would have been, to sell it all to a trader at no more than 20% of cost. Whilst it was acknowledged that Birkenhead had been under-performing for a number of years, it only became ostensibly loss making in 2004 and the short term plan was to keep it open, post the Liverpool dispossession, pending suitable alternative premises being found in the city centre. The decision to close Birkenhead was only taken when it became clear that the negative financial impact of the Liverpool closure caused, for instance, by increased storage costs (the Uveco units) and loss of bulk-buying discounts, would be irretrievable with the chances of a Liverpool relocation having severely diminished. There were also increased management, vehicle and insurance costs that had to be borne by Birkenhead (these formerly being shared expenses) and as these were directly attributable to the CPO, they should be claimable as disturbance items as per Mr Lazarevic's calculations. Miss Crowley said that, despite what Mrs Ewing and Mr Massie thought, the Birkenhead business would have been retrievable in the no-scheme world, even though there had been a general decline in Birkenhead town centre as a shopping destination.

65. Whilst acknowledging that both the Liverpool and Birkenhead businesses were affected by competition, Miss Crowley said that Mr Massie and Mrs Ewing demonstrated a lack of understanding both as to who were Contraband's real competitors, and what steps the business had historically and successfully taken to counter it. The existence of the two geographically close stores with cheap on-site storage, the ability to gain substantial bulk purchase discounts, and an efficient distribution model linked with high customer flows meant that Contraband had met all the relevant criteria to compete effectively in its chosen marketplace.

66. Mr Irving said that he first discussed the possibility that the subject premises might be affected by a redevelopment scheme with Miss Crowley and Mr Jarvis towards the end of 2002, and explained to them that they would need to mitigate any losses, and take steps to find alternative accommodation. He said he was also acting for 5 other parties who were likely to have to relocate, including Lloyds TSB, Music Notes and the Dolphin Dance Studio, all of whom had since successfully relocated. He was also acting for Gees Bathrooms who for a time

occupied the basement at 87 Hanover Street, so he was familiar with that unit. Gees eventually relocated to a large unit on London Road, close to TJ Hughes, and virtually opposite the former Salters furniture store. Mr Irving said that he was aware from the outset that finding suitable premises for Contraband would be difficult, a fact acknowledged by Mr Butler when he met him to discuss the redevelopment proposals in February 2003, the month in which he had sought, and obtained, instructions from the claimants. His recollection was that, in seeking to replicate as closely as possible what the claimants already had, the requirement was for approximately 10,000 sq ft retail, and 10,000 sq ft on-site storage. He said he advised Mr Butler that they could not afford to let "the grass grow under their feet". Mr Butler had said he thought possession was likely to be required in the spring of 2004 and had also recognised that total extinguishment of the business was a probability. It was only at a further meeting with Mr Butler and Alex Lewis of Tushingham Moore in May 2003, that, Mr Irving said, he received an indication that the council were looking to relocate rather than having to pay for extinguishment of the business. However, both Mr Butler and Mr Lewis had been extremely vague about the possibility of Contraband being relocated within the scheme.

67. Mr Irving said he inspected 87 Hanover Street with the claimants on 24 July 2003 after Tushingham Moore had offered the premises as a possibility on 3 July. Although the rent was then quoted at £80,000 pa, Mr Irving subsequently received a letter dated 23 July from Alex Lewis stating that the asking rent was, in fact, £60,000 pa and he said he passed that information on to Miss Crowley. The fact that, even at £60,000 pa, the rent was higher than was being paid at the subject premises was only one of the factors that had prompted the claimants to immediately dismiss 87 Hanover Street as unsuitable, those having been outlined in Miss Crowley's evidence, and the key point being the unavailability of sufficient on-site storage. In answer to a question from the Tribunal, Mr Irving said that, although there was no specific reference to it in his evidence, he would have explained to Miss Crowley that, had she remained at 63 Hanover Street, the rent would have risen to a current market rate on renewal of the lease in September 2006. Mr Irving explained that he had been acting previously for Gees Bathrooms, who at the time of the claimants' inspection, were temporarily occupying the premises, and had been negotiating terms for a long lease at a rental of £60,000. However, they also proved unsuitable for Gees and Mr Irving said he had not subsequently pursued the accommodation for Contraband for the same reason. He admitted in cross-examination that, at that time (July 2003), he had not advised the claimants in his professional capacity to consider remote storage (other than immediately adjacent or extremely close by). He did say that he advised Miss Crowley that she would need to be flexible and realistic, if she were to be able to continue trading in Liverpool city centre.

68. At about the same time as the council confirmed their offer to the claimants of £350,000 compensation, Tushingham Moore provided a composite list of 49 available properties, and these were passed on to the claimants. All of them were dismissed as unsuitable Following a further meeting between himself, Guy Butler and Alex Lewis on 3 September 2003, at which Mr Butler said he thought there was a chance of Contraband relocating if they would consider remote storage, Mr Irving said he asked Miss Crowley to produce a business plan to that effect; this was produced in October, and showed that the cost to the business would be "incalculable". From September 2003 onwards (even to the present time) there was considerable activity in respect of the search, and a number of potential premises were inspected, but none of these were suitable to the claimants.

69. Regarding the Kumar building, Mr Irving said that he and Miss Crowley viewed the premises in February 2004, but that they were told that whilst they could have a look around, they were not formally available as a planning application for A3 restaurant use had been submitted, and the vendor was hoping to treat with a Chinese restaurant at a substantial premium if permission was obtained (which it eventually was). The assignment to the restaurant did not go through because, Mr Irving thought, there was a defect in the lease. However, they did come back onto the market briefly at an intended premium of £100,000, but, as he had advised to Alex Lewis in writing on 10 February 2004, the claimants thought the premises to be unsuitable and therefore the matter was not considered further. He accepted, in cross-examination, that the alleged lease problems could probably have been resolved, and terms negotiated, if Grosvenor had been invited to become involved, as indeed they were in respect of the proposed occupation by a company called Quiggins. That deal did not, however, proceed due to a family dispute in the company, and the building was withdrawn from the market in November 2004.

70. In his evidence as to the value of the under-leasehold interest in the subject premises, Mr Lyons stressed that the scheme of redevelopment was vast, extending as it did to over 40 acres, and this effectively eliminated a large amount of what would otherwise have been potentially available alternative accommodation. He thought this fact had been recognised by Grosvenor as the terms that were offered to and accepted by Kwik Save, some 12 months before the valuation date, made no demands upon them to seek relocation. Indeed, he said, that begged the question as to why the council was taking the relocation stance that it was with the claimants.

Alternative premises - Acquiring Authority's case

71. Mr Butler explained that he had joined Grosvenor in 1999 and, prior to moving to Liverpool in October 2002 to take responsibility for site assembly in the PSDA scheme, he had been involved with a similar, but smaller development in Basingstoke. He first spoke to Miss Crowley on the telephone on 30 January 2003, when she advised him that Mr Irving had been appointed to act on their behalf, raised various queries and stated her concerns that Grosvenor would not be able to find suitable premises to accommodate Contraband. Mr Butler said he then immediately spoke to Mr Irving and explained that whilst he was happy to discuss relocation, his preference would be for the matter to be progressed in early summer. This, he said in cross-examination, was because whilst he wanted to get things underway, it was likely to be 12 months or so before the CPO was confirmed and Grosvenor was not in a position to treat prior to that. Although he had a small budget for pre-scheme acquisitions, he confirmed that even if the claimants had found somewhere suitable at that early stage, he would not have been able to treat until May 2004. He also accepted that the 12 weeks notice that the claimants were eventually given would not have been extended. Mr Butler said he then met Mr Irving on 6 February 2003, at which time details of Contraband's occupancy of 63 Hanover Street and their relocation requirements were initially discussed and subsequently there were a number of conversations and exchanges of correspondence with him and Alex Lewis of Tushingham Moore about potential alternative premises both for Contraband, and other clients for whom Mr Irving was acting.

72. In March 2003, when Mr Irving had said that they needed to ensure "the grass should not be allowed to grow under their feet", he acknowledged that both sides seemed eager to find alternative premises although, as time went on, he said he gained the distinct impression, particularly from his conversations with Mr Irving, that the claimants were just going through the motions, and were not really committed to moving. However, in cross-examination he admitted that Miss Crowley was being realistic in her concerns about the non-availability of suitable alternatives, and that she had spent much time looking at everything that had been put forward by Grosvenor's agents, but thought that perhaps she had not analysed the potentiality of those premises that he did consider suitable, deeply enough. Whilst Mr Butler had asked Alex Lewis to provide a comprehensive list of available premises to the claimants in April 2003, he accepted that that information had not been disseminated before August. He thought it unlikely that there would be an opportunity for Contraband to go into the scheme, other than perhaps into units 21/22, due to the on-site storage requirement and he accepted that even if that had been possible, it would be 2008 before they became available. It was understandable therefore that the claimants were reluctant to close the business for at least 3 years; there would be double overheads to consider, and in any event he did not feel Contraband's business was the type of outlet they were looking for, or that its covenant would be strong enough.

73. Mr Butler said that he secured Mr Ramsay's agreement to consider Contraband as potential tenants for 87 Hanover Street, and in his view, those premises were suitable despite the fact that he accepted the on-site storage was insufficient. He recalled that the claimants had said on site storage would be preferable but not essential, although he had not realised that Miss Crowley meant at least 3,000 sq ft of storage would need to be on the premises. He was of the view that the claimants did not give sufficient consideration to the off-site storage option. As to the Kumar building, Mr Butler said that he felt it could well have been used by Contraband, and that if they had approached him rather than dismissing it out of hand, he would have been able to negotiate a deal with the landlord on their behalf at £50,000 pa. However, he accepted in cross-examination that there had been questions over whether the premises were actually available at the time the claimants viewed them, and that there was no evidence they were actually on the market between May and September 2004. He said he believed the compensation figure of £350,000 eventually agreed with the claimants, and which he accepted was not unconditional, but would only become payable once the CPO had been confirmed, was more than adequate. He accepted that this arrangement, and the ones that had been entered into with Kwik Save and the head-landlord, were predicated on the need to get objections to the CPO withdrawn. Mr Butler accepted that the agreement did not become binding until May 2004, at which time the Chinese Restaurant that eventually took 87 Hanover Street was in negotiations with Mr Ramsey, and the claimants would, therefore, have been in open competition for them. He said that even after the compensation deal had been struck, he and Alex Lewis continued to feed possibilities to Miss Crowley, but all of them had been rejected.

74. As to whether or not Kwik Save's compensation had been based upon extinguishment or notional relocation, Mr Butler said it was Grosvenor's policy not to pay compensation based upon extinguishment and in his view the figure of £1.25 million agreed with them was on a notional relocation basis and included some £850,000 agreed fit out costs if they had moved. He said that there was no evidence that they did move within Liverpool, and that they had effectively closed their operations in the city. He said that he did not care what the basis of

settlement was – Grosvenor wanted them out, and so long as the compensation was not too far over that which would be calculated on a notional relocation basis, "that was fine".

Alternative premises – Conclusions

75. It is clear that the claimants have encountered serious difficulties in their quest to find suitable alternative premises. The premises that they occupied were, it seems to me, ideal for the type of business they ran, and the availability of cheap on-site storage with good accessibility both for customers and for deliveries were distinct advantages that would be difficult to replicate however much time had been available. Even allowing for rent increases upon renewal of the leases in September 2006 in a no-scheme world, I have no reason to conclude that the business in Liverpool would not continue as a profitable and successful enterprise. I also accept what both Mr Lyons and Miss Crowley said regarding the loss of over 40 acres in the city centre reducing the number of potential relocation sites.

76. I am satisfied that the claimants' actions from the outset have demonstrated a real desire to continue trading in Liverpool city centre, despite what Miss Crowley said about wishing to 'semi-retire' in due course. In my view, semi-retirement is different from retirement, and I accept what she said that her medium to long term plans were to train up suitable staff to take the day-to-day onus away from her, and allow her to take a step back whilst still retaining overall control (as she had also previously done when assisting Mr Jarvis with his other business venture). Mr Butler, having questioned the claimants' motives in his reports, accepted in cross-examination that Miss Crowley had been genuinely trying to find alternative premises. Also, I do not think the claimants can fairly be criticised (as they were by Mr Butler) for asking questions about total extinguishment, or for appointing surveyors and accountants at an early stage. Miss Crowley struck me as an intelligent and level-headed businesswoman who also had the foresight to appoint an agent in early 2003 to try to find premises to which the business could be moved.

77. There was much argument during the hearing about whether the claimants were fully committed to finding alternative premises, but the fact remains that in reality they had a preciously narrow window (12 weeks from confirmation of the CPO) during which they would be able to actually commit to new accommodation. Mr Butler stated quite categorically early in his cross-examination that Grosvenor would not have been prepared to treat with them prior to the CPO being confirmed, so even if they had found somewhere to go at an earlier stage, as far as Miss Crowley and Mr Jarvis understood, they would not have been able to proceed in any event. I am not convinced by what Mr Butler said in response to a question from me towards the end of his cross-examination that, having thought about it [overnight], as Grosvenor had pre-committed with one other occupier (a photo-shop), if the claimants had come forward with a proposal, they might have considered it. There was certainly no evidence to support that apparent change of stance, and it remains a fact that, despite the claimants' early approach to him, Mr Butler was not initially keen to progress matters, indicating, as he did, that summer (of 2003) would be the time to start thinking about it. He said that was because it was known that the premises would not be needed until early 2004 and also, that having only recently transferred to Liverpool, he was still trying to find his feet in January when that initial meeting took place. I am not persuaded by the council's submissions that, firstly, confirmation of the CPO was a virtual certainty from mid 2003, and secondly, that

Grosvenor would probably have been open to concluding terms prior to such confirmation if the right premises had been found. Mr Butler's evidence and statements relating to the type and health of the business undertaken by the claimants contained a number of pejorative remarks and unqualified opinions that, in my view, demonstrated a prejudice against them and went beyond his remit as a factual witness.

78. It was clear from the evidence that the offer that was made to the claimants in the sum of £350,000, as set out in The Agreement of 1 October 2004, as were the ones made to and agreed with Kwik Save and the freeholder, was driven by Grosvenor's desire to get the objections to the proposed CPO lifted before the Inquiry. As the evidence relating to the Kwik Save negotiations showed, and it was agreed by the respondents at the hearing, the price eventually settled with Kwik Save at £1.25m was a "horse deal", and the arguments as to whether or not the compensation was agreed on the basis of total extinguishment of their Liverpool business, or notional relocation is nothing to the point. Likewise, the sum which the claimants agreed (subject of course to the provisos in clause 11 that are set out above) is not a scientific compensation calculation under the compensation code. I conclude therefore, that no weight can be given to the Kwik Save settlement for comparison purposes, nor to the sum actually agreed with the claimants. For that reason, I do not consider it necessary to record the evidence of Mr Moran in respect of this issue.

79. It was agreed early in the proceedings that, realistically, it was only 87 Hanover Street and the Kumar Building that might have been suitable relocation options, and the council accepted that the Salters premises were by no means ideal. It is therefore relevant to record here that it was also agreed none of the many other premises that were offered to the claimants were suitable, and for the purposes of determining this issue, therefore, it is only these two that fall to be considered. There is no doubt in my mind that 87 Hanover Street, in terms of trading location, was, as I have already said, better than no. 63. It also met some of the claimants' stated criteria in that it was basement premises and had a goods lift that was suitable. However, they were very much smaller than the subject premises, and even if the lower mezzanine area could have been used for storage (and I think, on balance, that it could, but the utilisable area would have been very small due to the need to also accommodate the offices), additional off-site storage would have been needed. Miss Crowley made it quite clear in cross-examination that her statement that 9,000 sq ft on one floor (to include 3,000 sq ft on-site storage) was the absolute minimum she could contemplate was exactly that – the least area from which she though they could trade and continue to run a profitable business. As it was, Mr Irving had been instructed to find accommodation of a similar size to what the claimants were enjoying at 63 Hanover Street, and despite the fact that there appeared to be some confusion over whether he had been advised of the minimum acceptable requirement, I conclude that 87 Hanover Street at a total of less than 8,000 sq ft would have been too small. There would also have been loading and unloading problems that did not exist at the subject premises, and I am not persuaded by the council's claims that the existence of the taxi rank and general parking restrictions would not have been a problem.

80. The Kumar Building, on the face of it, looked to have considerable potential and, although Miss Crowley had reservations about its location in trading terms, I agree with the council that it was high-profile - probably more so than the subject premises. The fact that Kumar was directly opposite a large, long established department store meant that whilst

footfall might have been modest on the Kumar side of the road, the premises would have been far more visible to shoppers in general than anywhere in Hanover Street. The first two floors offered sufficient trading space to meet with the claimants' parameters, and in my view, Miss Crowley was over concerned about the possible detrimental affects of split-floor trading. There was a customer lift in place. Although she had been concerned about access for large delivery lorries, Miss Crowley admitted at the hearing that that would not be a problem, and access was as good as, if not better than, at the subject premises. However, where I find the claimants' concerns to be relevant are, once again, over the question of storage. Whilst there was more than enough of it, and room on the second floor for the administrative offices, access was a serious problem. It would, in my view, be unrealistic to expect the claimants to carry heavy items and large boxes from the basement to the third and fourth floors, and it was acknowledged that the passenger lift was unsuitable for use as a goods lift for pallets of tiles. Also, I can understand the claimants' concerns about sharing a single lift for the use of customers, and for moving goods and I accept that the basement lean-to loading area would not be suitable for anything more than very limited storage.

81. In my judgment, neither of the two alternative premises were suited to the claimants needs, without the need to utilise remote storage, and I do not accept the council's claims that a "reasonable businessman" would have relocated to one of them, even if they had been available. On that point, I am not satisfied that terms could definitely have been negotiated with Mr Ramsey, the landlord of 87 Hanover Street, after the CPO was confirmed, due to the fact that he was already in negotiations with the owner of the Buffet Star Chinese restaurant who subsequently concluded terms for a 35 year lease. As I have said above, with Grosvenor not being prepared to commit prior to the confirmation, the claimants would not have been in a position to proceed sooner. I also accept the claimants' concerns over the landlord's apparent attitude over the availability of the Kumar Building

82. Turning to remote storage, it appears to be agreed that it was unlikely anything suitable could be found within the city centre, and the claimants would have had to consider a unit or units similar to, or even larger than, the ones they did eventually take at Uveco Although I think that Miss Crowley's initial thoughts in connection with the extra costs involved, as provided to Mr Irving, were somewhat pessimistic, she produced, in her supplementary report, further calculations that showed the impact on turnover and profitability that would have been likely to occur (those assuming that Birkenhead would continue trading) if she had taken either of the two storage units that had been suggested by Mr Massie. To cover the additional costs, (based upon storage at premises in Clegg Street) the increases that would have been needed to turnover at 87 Hanover Street, over that being achieved at the subject premises, were almost 20% just to break even, and 45% to achieve half of the £146,000 net profit that had been made in 2002-2003. If storage had been taken at Sandon Industrial Estate, which was much more expensive, the effect was even worse. The only aspect within those estimates that was seriously questioned at the hearing (although somewhat more was made of them in the council's closing submissions) was the increased costs associated with the delivery van and driver. It seems to me that, even if those figures were overstated, the additional costs and inconvenience of remote storage when added to the higher occupation costs that would be required at either of the alternative premises place a large question mark over the ongoing viability of the business.

83. It is, of course, the duty of the claimants to take all reasonable steps to mitigate their losses, and if future profits were reduced as a result of a move to alternative premises occasioned by the CPO, such losses are valid heads of claim in terms of compensation. Therefore, if taking one of the premises alleged to be suitable together with off-site storage facilities had resulted in permanently reduced future profits, but still remained viable as a business, compensation would fall to be assessed on a notional relocation basis and not total extinguishment. However, from the evidence, I am satisfied that, even accounting for the fact that Miss Crowley did not factor in the possibility of increased rental at the subject premises in the no-scheme world in undertaking her comparisons (which on my findings would have been nowhere near as significant as suggested by Mr Massie), the additional trade that would have been required to retain a viable business would be unachievable if either of Mr Massie's suggested alternative storage premises had been taken. It is a fact that the claimants did take remote storage of approximately 3,000 sq ft at the Uveco units in August 2004 (although the point was not taken by either of the parties at the hearing or in submissions) and even though these were at a rental that equated to £3.75 psf, rather more than the rent the claimants were paying for the main trading area at the subject premises, they were significantly cheaper than Mr Massie's alternatives. However, weighing up all the evidence, and particularly Miss Crowley's reasoning, I am sufficiently convinced that the detrimental effect on profitability would have been so great as to bring into question the overall viability of the business. Even if 87 Hanover Street had been available, the floor area, as I have said, fell well below the claimants' absolute minimum requirements and to have taken the Kumar building together with remote storage would have left the claimants with the two upper floors that would be of no use to them. I am therefore satisfied that to have taken either of the two possible trading outlets and remote storage would not have been the actions of a reasonable businessman. It follows that I find for the claimants on this question, and the claim is to be determined on the basis that the Liverpool business has had to be totally extinguished. I turn now to the question of Birkenhead.

3. Birkenhead store – claimants' case

84. Miss Crowley's comments on the subject of Birkenhead have already been recorded at paragraphs 63 & 64 above. On the basis of information provided by her and Contraband's accountants, Mr Lazarevic had, in his original report, calculated the disturbance claim under two scenarios. Firstly, that Liverpool and Birkenhead effectively operated as one business (his principal case), and the claim therefore included loss of goodwill for Birkenhead as well and the costs associated with keeping that store open until May 2006. Secondly, should I find that basis inappropriate, that Liverpool was a stand-alone operation. As to quantum of losses, he provided two supplemental reports and in the second, included a summary of the claim that is reproduced (adjusting for Mr Lyons' reduced rule (2) claim) in paragraph 8 above. Even if Liverpool was to be taken as a stand-alone operation, Mr Lazarevic explained that some of the losses occasioned at Birkenhead were rightly included in the claim. Although it was acknowledged that profits at Birkenhead had been falling for a number of years, he said that the first time a loss had been recorded was in April 2004 by which time the effects of the CPO were being felt. Whilst the losses continued (and increased) throughout the period the store continued to trade after the closure of Liverpool, Mr Lazarevic said they were contributed to by the loss of trading discounts, the extra storage costs associated with the Uveco units, depreciation adjustments and other increased costs that were previously shared between the two cost centres. All of these factors were directly related to the CPO and it was unreasonable,

therefore, for the council to suggest that by April 2004 the business was not viable for non-CPO related reasons. However, in cross-examination, he agreed that it would be unreasonable to expect the council to pay the whole of Birkenhead's losses from 1 April 2004 to the date of closure in 2006 as, on the basis of the figures, he would predict a continuing downward trend in any event, despite the Liverpool closure.

Birkenhead store – council's case

85. Mrs Ewing said she agreed that as the two stores sold a similar range of goods, that Liverpool also stored stock for Birkenhead, that bulk discounts could be achieved and that there were a number of overheads and operating factors that were shared, the two shops could not be considered to be stand-alone enterprises. She also accepted that Birkenhead could not be expected to survive as a stand-alone business unit without Liverpool. However, she said that it did not follow that the eventual closure of Birkenhead was a direct consequence of the CPO as, having reviewed the accounts, it was clear that by April 2004 Birkenhead was not a viable business regardless of whether or not Liverpool had continued, and consequently no loss of future profits or goodwill could be claimed for that store. There were no prospects of Birkenhead continuing to create returns to the business, and a prudent business decision would have been to close it prior to the closure of Liverpool, thus mitigating rising losses. In the event, none of Mrs Ewing's figures under the individual heads of claim included any compensation for Birkenhead.

86. The relevant trading figures for the years ending 30 April for Birkenhead (agreed with Mr Lazarevic) were:

Year ended 30 April	2000	2001	2002	2003	2004
	£000	£000	£000	£000	£000
Turnover	469	595	546	529	454
Net profit (loss)	60	36	28	10	(6)
Net profit %	*12.8*	*7.0*	*5.1*	*1.9*	*(1.3)*

87. In cross-examination, Mrs Ewing accepted that, even though she had not considered the point due to her view that Birkenhead was not viable at the relevant date, the downturn in profits that did occur there from the end of 2003 could have been exacerbated by the CPO, and therefore it was acknowledged that some compensation could be due under that head. This aspect is considered under "Post-possession losses" which follows.

88. The council submitted that it was clear the Birkenhead business had been in terminal decline for a considerable period of time, and there was no realistic prospect of its fortunes being reversed. The claimants, as Miss Crowley had admitted, had not accorded its problems any priority and indeed, there were no proposals featured in the 2002 – 2005 Business Plan to

address the issues. Whilst it was accepted that the opportunity to sell much of Liverpool's stock through Birkenhead following that shop's closure will have gone some way to mitigating claimable losses, the costs and loss of profits associated with keeping Birkenhead open until 2006 exceeded any such savings.

89. Mr Fraser said that the concessions made by Mrs Ewing in cross-examination in which she acknowledged that the CPO could have added to Birkenhead's losses meant that the respondents' arguments that no losses were claimable due to the store's alleged lack of viability clearly failed. The question of viability was in any event not accepted, as the first loss on that outlet was not recorded until April 2004, by which time the CPO was having an impact, and it could have been the CPO factor that "pushed it over the edge". Turnover had been rising until 2002, and it was accepted by Mrs Ewing that businesses do not simply close units the instant they fall into a loss situation. It was an entirely prudent business decision for the claimants to keep Birkenhead open knowing, as they did, that they were likely to be dispossessed from Liverpool at short notice (which indeed occurred), and it was important to retain staff, stock and supplier relationships pending suitable alternative Liverpool premises being found. The same argument applied to the need to take the Uveco storage units. An additional reason for not closing Birkenhead in April 2004, was the fact that under the terms of their lease of the premises, it could only be determined in June of each year, upon giving at least 6 months notice. Thus, they would have been liable for the premises costs up to June 2005 at the earliest.

Conclusions – Birkenhead store

90. The main issue to be determined here, in order to decide which of the expert accountants' two alternative approaches to the valuation of the business upon extinguishment is appropriate, is simply whether, at 1 October 2004, Birkenhead would have added value to the Liverpool operation. If it had not been for the CPO, it could only be a matter of speculation whether or not Birkenhead might have survived in the long term, or whether increased local competition and other factors would have led to its eventual demise, despite whatever efforts the claimants might have brought to bear to try to turn it around. However, it is clear to me that by the valuation date, the claimants had not got to grips with the problems, and as far as I can see from the evidence, there was no realistic prospect of profitability being restored. There had been a sharp decline in profits over a period of 5 years, and this was a trend that had begun well before there could have been any suggestion that the CPO might have had any effect upon Birkenhead. Even taking into account the minor accounting adjustments relating to administration and vehicle depreciation, there was unlikely to be any marked reversal of these trends. There was also increased competition in Birkenhead, and it was apparent from my site inspection that the area in which the premises were located was suffering from lack of investment. Miss Crowley accepted in cross-examination that Birkenhead had underperformed and that there was nothing that could be identified in her 2002 – 2005 business plan to address those issues. In my judgment, the claimants have not demonstrated that, at the valuation date, Birkenhead was either a profitable, or potentially profitable part of the business A prospective purchaser in the market place would not, therefore, conclude that it added any value to Liverpool and I accept the council's case that it should not be included as a part of the business to be valued at the relevant date. It is agreed that there was no value in the lease under which the Birkenhead premises were held. It follows that it is Mr Lazarevic's Liverpool only basis

that is to be considered in the following section, and that is also the approach used by Mrs Ewing.

91. Despite my conclusion above, it is a fact that the claimants did keep Birkenhead open for some 20 months after Liverpool closed, and I accept (as did the council) Miss Crowley's arguments that the opportunity to sell Liverpool's remaining stock from there, rather than at "fire-sale" values resulted in a reasonable mitigation of losses that would otherwise have occurred. It is also a fact, again accepted by the council, that the claimants continued to seek suitable alternative premises long after their dispossession from Liverpool, and it seems eminently reasonable to me that they should have used Birkenhead and the Uveco storage units to maintain their presence. These factors impact upon the CPO related costs and the post-possession losses to which I turn later.

4. Value of the Business

92. On the Liverpool only basis, Mr Lazerevic assessed the value of the business at £1,118,895 based upon his analysis of 5 years earnings, and Mrs Ewing said it should be £356,200 based upon her interpretation of the most recent full year's accounts to 30 April 2004. However, the two accountants were able to agree during the hearing, as a starting point for determining the multiplicand, net maintainable profits before tax of £137,000 pa.

93. In his submitted calculation of value, adopting the Price/Earnings (P/E) method for valuation purposes, and prior to their agreement Mr Lazarevic had taken an average profit before tax of £133,591, then deducted notional owner's wages (instead of interest on owner's capital) and, in order to allow for the possibility that the Hanover Street rent would increase in September 2006, he assumed a rent from then (from information provided by Mr Lyons) of £44,450 pa. This resulted in a normalised profit before tax of £99,903 from which he deducted tax at 32% to leave a net profit after tax (NPAT) figure of £67,383 as the multiplicand to which a multiplier was to be applied (known as the P/E multiple).

94. Mr Lazerevic said the P/E multiple was the number that reflected the risk inherent in normalised earnings to determine the present value. It was usually selected from the P/E multiples of comparable listed companies based upon their historical earnings and anticipated growth. He identified four companies (Brown & Jackson Plc (owners of the Poundstretcher discount chain), GUS, Kingfisher and Woolworths) whose activities he thought to be comparable to Contraband's, and which he considered to be the most helpful in deriving an appropriate P/E multiple. Their average was 18.9 at September 2004. As a check, he also referred to the London Business School Risk Measurement Service which gave an equally weighted average for the discount store sector of 12.3 and an average for the retail sector of 16.4. Accepting that substantial adjustments had to be made from large, national listed companies, he consulted the BDO Private Company Price Index (PCPI) to find a suitable illiquidity discount to be applied to a private company. According to that index, the P/E for public companies at Q3 2004 was 16.9 and for private companies it was 14 – representing an illiquidity discount of 17%. In his view, the discount should be 35% in respect of Contraband to reflect the size and type of business being valued here in comparison with the market generally (this having been reduced from 45% which he thought appropriate in his first

valuation report). Deducting that percentage from the 18.9 for the four multiples he thought most comparable gave figure of 12.3. In determining an appropriate P/E multiple, Mr Lazarevic said he also took into account the fact that, for the purposes of assessing compensation, it had to be assumed the business would have been sold in October 2004, just before the pre-Christmas trading period which it had been agreed was by far the most profitable time of year. The calculation became:

Net profit after tax (NPAT)	£ 67,383
Discounted NPAT multiple	12.3
	£ 828,811

95. To this figure, he said, a percentage should be applied to reflect the control and lack of restrictions that the claimants enjoyed over the running of their business in comparison with a public or quoted company (the control premium). He said he carried out research into takeovers of listed companies which indicated control premiums to be typically between 20% and 35% of the share market price before takeover. He also carried out an analysis of the sale of the TJ Hughes discount store business in 2003 (39 stores) that had been referred to by Mrs Ewing in her initial report, but subsequently abandoned by her. That showed an effective control premium on that transaction of 34%. In his view, the appropriate control premium for Contraband was 35%, bringing the value of the business to £1,118,895. I record that, on the basis of the subsequently agreed maintainable earnings figure of £137,000, the net profit after tax became £70,253 and the value of the business became £1,166,512.

96. It was then necessary, he said, to make deductions for recoveries of £20,000 being the rule (2) compensation for the value of the leasehold interest, net assets at 20 September 2004 (date of Liverpool closure) of £147,712, and the CPO related expenses of £48,403 (if the post possession losses as claimed are allowed) totalling £216,115.

97. In cross-examination, Mr Lazarevic said that if the rent of 63 Hanover Street had increased on renewal in September 2006 to the £92,000 suggested by Mr Massie, this would be reflected in the multiplicand, but if such an increase placed a question mark over the ongoing viability of the Liverpool business, this would also need to be reflected, as a matter of judgment, in the multiplier. Similarly, if there were significant risks of the lease not being renewed (although he had understood from Mr Moran's evidence (see below) that Kwik Save were unlikely to redevelop), that would need to be reflected in the multiplier. As to the use of major public companies as comparators, he did not agree with the suggestion that that was inappropriate in valuing the Contraband business. Corporate financiers, he said, used that approach all the time, and he had made huge adjustments to reflect the differences. On the contrary, he said, it was Mrs Ewing's approach that was wholly inappropriate, and using a website of businesses for sale was something he had never come across before (and she had admitted to never having previously used it for this purpose).

98. Mr Moran said that he had been retained by Somerfield Stores (which included Kwik Save) to provide advice and assistance in connection with compulsory purchase matters and had been personally responsible for the negotiations with Grosvenor that concluded with compensation being agreed at £1,250,000. In a supplemental statement to his original witness

statement of fact relating to those negotiations, he said that Kwik Save, as immediate landlord to Contraband, had no operational need to occupy either of the floors occupied by the claimants either at the end of their leases (2006) or, to his knowledge, at any future date. He said Kwik Save had no history or ambitions in property development (other than the building of new supermarkets on sites acquired for its own occupation), and there was no reason to anticipate that on expiry, Kwik Save would have sought to deny Contraband the opportunity to renew their leases.

99. Mrs Ewing adopted a markedly different approach in valuing the business. Whilst she accepted that Mr Lazarevic's P/E method was valid, in her view, the substantial adjustments that he had had to make to the P/E multiples for publicly quoted companies were so significant as to make the comparison virtually worthless. She said that she was aware, from her own experience and from her discussions with the partners in Grant Thornton's corporate finance groups, that small, owner managed businesses tended to be sold on an earnings multiplier of between 3 and 8. She accepted that the valuation of such businesses was not an exact science, being more of a judgment call, and so to try and narrow the range down in the absence of better evidence, she consulted the businessesforsale.com website.

100. The website included details of asking prices, turnover and net profits together with brief details of each of the privately owned businesses that were on the market, and whether their premises were freehold or leasehold and if the latter, the lease terms, rent review dates etc. She said she analysed 10 available businesses in the retail – general and home & garden sections with asking prices up to £2 million that were operating from leasehold premises. The average turnover of those selected was £813,000, somewhat less than Contraband's, but net profits were on the whole at higher percentages. The Years Purchase multipliers ranged from 1.0 to 4.5 and she took an average of 2.6 to apply to Contraband. That reflected the downturn in income since the beginning of 2003, a tendency towards increased overheads and the fact that the claimants did not own the premises from which they traded. From her general experience, Mrs Ewing said, YPs towards the higher end of the range tended to be for highly successful enterprises with freehold premises together with significant and steady profits growth. Whilst she accepted in cross-examination that not only was nothing known about the businesses on the website (other than what was shown), and asking prices were not sale prices, she pointed out that, allowing for anticipated negotiation it was likely that YPs would, if anything, reduce if based upon an actual achieved price. She also said that whilst it was clear that turnover at Contraband had risen significantly over the years, this had not been reflected in profit growth anything like to the extent that was apparent in the quoted companies that Mr Lazerivic had relied upon.

101. Having agreed an appropriate pre-tax profits multiplicand of £137,000, a multiplier of 2.6 (which was equivalent to a P/E of 4.3 on Mr Lazerivic's basis) gave a value of £356,200. Mrs Ewing did not deduct notional wages for Miss Crowley, saying that to do so was inappropriate for an owner-operated business, and reflected the 'value-to-owner' principle. She went on to say that her multiplier did not reflect the anticipation of significantly increased rental outlay from the 2006 review, or any risks that there might be of the claimants being unable to renew their leases.

102. She said that in order to arrive at the value of the goodwill, it was necessary to deduct the value of the net assets (those being the stock and other assets required to run the business) which, per Liverpool's accounts, were £231,568 at 30 April 2004, together with the value of the lease under rule (2) at £120,000 to leave a figure of £4,632 (£356,500 - £351,568).

Conclusions – value of business

103. The starting point for establishing the appropriate multiplicand - average maintainable pre-tax profits - has now been agreed between the accountancy experts at £137,000 and Mrs Ewing produced a revised calculation based upon that figure. Mr Lazarevic's reports used a slightly different figure (£133,591) from which adjustments, to which I shall turn, will need to be made to reflect the agreement.

104. The choice of multiplier is not easy, and the two accountants have adopted different methodologies to reach conclusions as to what it should be. I find assistance in both approaches. Mrs Ewing, using her experience of valuing relatively small, privately run businesses, concluded that a YP to maintainable earnings, pre tax and without allowing for owners replacement wages, was appropriate, and was likely to produce a multiplier in a range of 3 to 8. Reflecting Contraband's particular circumstances, she opted for a YP of 2.6.

105. That range has certainly been the historical experience in cases before this Tribunal (see for example *Halil v London Borough of Lambeth* [2001] RVR 181 and the cases referred to therein). However, I am reminded of the comments made by the Member, Mr P H Clarke FRICS in *Optical Express (Southern) Ltd v Birmingham City Council* [2005] 2 EGLR 141 (a case that bore remarkable similarities in many respects to this one) where he said (at 171):

> "171. I turn now to settlements calculated on what was called the traditional approach to the valuation of goodwill or future profits. This involves the calculation of historic profit (usually the average of the last three years trading); the deduction of rental value or profit rent, interest on capital and perhaps proprietors' remuneration; and the capitalisation of the net figure by a figure of years purchase (YP) usually in the range of two to five. These settlements are included in the evidence of Mr Chase. Mr Phillips used them, particularly the YP figures, as a check on his calculation of future loss. Ms Fowler said that the low multiples used may not have regard to the specific circumstances of a particular case and are not an appropriate cross-check on the earnings multiple method.
>
> 172. I do not find these settlements of assistance. Even more than land value, where the measure of loss is market value, they relate to the particular circumstances of each case, where the measure of loss is value to the owner, reflecting the special circumstances of each claimant. Every case is settled on its own merits. The particular difficulty with this approach is the YP figure. There is a lack of market evidence and the figure of YP is usually fixed by reference to settlements and decisions of the Tribunal, which become self-perpetuating within a particular range without any guidance or check from the market."

In that case, Mr Clarke opted for an EBITDA approach (which the experts here considered inappropriate) that gave a multiplier of 7.6, which equated to 11.0 on the P/E basis that Ms

Fowler, the claimant's accountancy expert had used (gross profits less staff costs, property overheads and other charges).

106. Whilst the above extracts from *Optical Express* demonstrate the potential dangers of relying upon a YP multiplier, such a methodology has the advantage of not requiring the substantial adjustments that Mr Lazarevic's approach demands. If I had no alternative evidence and had to determine the issue solely on Mrs Ewing's basis, I would have serious reservations about the multiplier she plumped for – taking an average of the apparent YPs on businesses that were for sale and about which the information was scant. It was accepted that Contraband was a larger business than those that it was being compared with, it had a history of successful and highly profitable trading and, in the absence of the CPO, there was nothing other than the potential for a rent increase in 2006 (which I deal with in more detail below), some risk as to whether the leases would be renewed (and I consider that risk to have been slight on the basis of Mr Moran's evidence) and increasing competition which in my view the claimants were well capable of dealing with, to act as a disincentive to a purchaser. I would have thought that a YP of 4 to 5 would be a more appropriate figure, giving a value based upon the agreed maintainable earnings within the range £548,000 to £685,000.

107. Turning to Mr Lazarevic's methodology, which I prefer in terms of the treatment of owners' wages and his specific adjustment for an anticipated rent increase, I note that the principles were not in dispute, but the real question was over the comparison of the claimants' business with multi-branch, multi-million pound turnover national chains and then having to apply huge adjustments. Mrs Ewing thought that taking a P/E (post-tax) multiplier in the mid to upper teens and then deducting 35% for an illiquidity premium and adding 35% for a control premium (effectively ending up at the same P/E ratio) was wholly inappropriate. I agree. Using Mr Lazarevic's NPAT figure (adjusted to £70,253 following the agreement on pre-tax maintainable earnings), the resulting value of £1,166,551 equates to an effective P/E multiple of 16.6, which seems to me to be out of all proportion to what, in my judgment, the market would expect to pay for a business of this type.

108. I was surprised, in the light of the overall circumstances relating to this business, to see that, after analysing the evidence, Mr Lazarevic chose to take the highest P/E of 18.9, as his base multiple from which to make his adjustments. It seems to me that a far more appropriate base multiplier would have been 12.3 (discount stores sector) as I do not accept the view he expressed that the sample from which that figure was derived was unrepresentative. I do however accept his suggested 35% illiquidity premium to reflect the differences between Contraband and that part of the quoted sector. This produces a figure of 7.99 – say 8, which gives £562,024 (£70,253 x 8) to which should be added a control premium. This, in my judgment, should be small, and I adopt a marginally higher figure, of 20%, than the one used in *Optical Express* to reflect Contraband being a local concern, rather than suffering the constraints brought by being part of a national chain. The resultant value of the business, using Mr Lazarevic's adjusted figures, is £674,428. That is an effective P/E multiplier of 9.59 (equivalent to a YP of 4.92), which in my view fairly reflects the differences between a business like Contraband, and the types of organisation to which Mr Lazarevic referred.

109. However, before reaching a final conclusion, from this evidence, on what I consider to be the right valuation, I do need to make one further adjustment, through the multiplicand, to

reflect the fact that I have, in the valuation of the leasehold interests above, adopted a rental value for the subject premises at the valuation date of £56,500 pa. That is an increase of £19,000 pa over the rent reserved and of £12,050 pa over that used by Mr Lazerevic in his calculation. Using this figure, the normalised profit before tax becomes £90,452 (using the owners' wages calculation from Mr Lazarevic's £133,591 – any required alteration to that being only a matter of pounds) on the P/E basis, and the rest of the calculation is thus:

Normalised profit before tax	£ 90,452
Tax (at 32%)	£ 28,945
Net profit after tax	£ 61,507
Multiple (12.3 less 35%)	8.0
	£492,056
Add control premium at 20%	£ 98,411
Value	£590,467 – say £600,000

110. It will be seen that that figure, based upon Mr Lazarevic's methodology, but adjusted to reflect my understanding of the evidence overall, falls in the middle of the range of the values that I have indicated to be appropriate if adopting Mrs Ewing's methodology. It follows that, on the basis of all the evidence presented, I am satisfied that the value of the business at 1 October 2004 was £600,000. It is then necessary to deduct the net assets and in that respect I adopt Mr Lazerevic's figure of £147,200 which was the correct figure, per the accounts, at the date the business was closed, together with the value of the leasehold interest at £29,000 and a proportion of the CPO related costs to which I turn later.

5. Pre-possession losses

111. Mr Lazarevic calculated these in the sum of £171,040 on both Liverpool only and combined stores bases on the assumption that CPO related losses affecting both stores commenced in January 2003, at the time the two key members of staff left the business. Mrs Ewing's figure was £35,053 on the assumption that there had been "some" impact upon pre-Christmas sales at Liverpool in 2003, and general impact there from April 2004 to October 2004 when it closed. She said that from the Liverpool trading accounts, despite what Mr Lazarevic had said about the business being affected by the CPO from January 2003, it was difficult to be precise as to when the CPO had actually had an effect. She reiterated that her assessment of pre-possession losses related solely to Liverpool, and there was no evidence to suggest that the CPO had any effect upon Birkenhead's results prior to the date upon which Liverpool closed. Liverpool's profits had remained constant in the 2002 and 2003 financial years, but Birkenhead's had been in steep decline for some time, and that must mean that the problems were related to matters other than the CPO.

112. The experts have agreed that, in calculating lost profits, a gross profit of 36.3% on turnover was an appropriate figure to take, however there was disagreement as to which accounting period was relevant. Mr Lazarevic said that in his original assessment of pre-possession losses (quantified at £229,114 in his November 2005 report) he used the combined

stores turnover for the calendar year to December 2002 as this was the last full year before CPO losses started to occur, and it could be anticipated that in the no-scheme world, turnover of the two stores would be maintained at this level. This was revised to the claimed £171,040 following a re-assessment on a Moving Average Total (MAT) basis to reflect the seasonality of the business. It was clear, he said, that the downturn in profits was caused by the loss of two key members of staff in January 2003, which Miss Crowley had stated was due entirely to the impending CPO, and that their departure affected each of the two stores equally. Mrs Ewing assessed the loss assuming that, but for the CPO, the (Liverpool) business would have achieved the same gross profit in the year ended 30 April 2004 as it did in the previous year and then deducted the gross profit actually achieved in that period to give a loss of £15,541. She then added a further £19,512 for the 4.5 months between 1 May 2004 and 20 September 2004 when the Liverpool store closed. This figure was achieved by taking the average monthly sales in March and April 2004, projecting them forward for a further 4.5 months, taking the agreed gross profit margin and then deducting the actual gross profit achieved. Mr Lazerevic said it was inappropriate to use March/April 2004 figures as a basis, as these were already severely tainted by the CPO. Also, part of the 2003 figures were affected if the argument was accepted that CPO related losses began with the loss of the staff members referred to.

113. Both experts expressed the view in cross-examination that it would be unlikely that the loss of the two members of staff would have had an immediate effect upon turnover and that is a point with which I agree. I am not persuaded, on Miss Crowley's evidence, that the resignations were responsible for the whole of the downturn, particularly as Ms Gallagher returned (albeit on a part time basis) after a very short time. The only other factor that was agreed to be likely to have affected results was competition, but as Miss Crowley explained, that had always been there and in my view there was no reason why the company should suddenly find itself, for no apparent reason, in a position where the competition started to affect results any more than had historically been the case. I note that in cross-examination Mrs Ewing admitted that if it were found that pre-possession losses from January 2003 were attributable to the CPO in both stores, Mr Lazarevic's figures appeared "about right". I also accept his comments that if that were the case, her use of trading figures during periods that were affected by the CPO was inappropriate.

114. Mr Lazarevic's calculations for the pre-possession losses of £171,040 was broken down between the two stores, and he also separated the periods January – April 2003 and May 2003 - October 2004 thus:

	Liverpool	Birkenhead	Combined
Loss of potential gross profit May 2003 – Oct 2004	£97,678	£50,977	£148,654
Loss of potential gross profit Jan 2003 – Apr 2003	£15,371	£7,015	£22,386
Total	£113,049	£57,992	£171,040

115. Having dismissed the suggestion that increased competition was a major factor contributing to the losses, and no other reasons (than the CPO and staff resignations) having been rehearsed, I accept the pre-possession losses as calculated by Mr Lazarevic on the Liverpool only basis subject to one caveat. It seems to me to be unrealistic to claim losses from January 2003 when the staff members did not leave until at least February, and it would have taken some time for the effects to be reflected in the figures. It was fortuitous, therefore, that Mr Lazerevic expressed his figures as he did and I conclude that pre-possession losses for the period May 2003 to October 2004 in the sum of £97,678 as shown are compensatable.

6. CPO related costs

116. Mr Lazarevic said that the level of CPO related costs incurred prior to possession were agreed with Mrs Ewing at £48,403 and in the claim he deducted these from his estimate of the value of the business. However, there was a further sum of £42,814 (as identified by Mr Lyons) relating to CPO costs that were incurred post-possession included within the claim of £148,879 for post possession losses for the combined Liverpool and Birkenhead stores. Those costs included the rental and other expenses relating to the Uveco storage units and to the retention of key staff that were required to sell the stock that had been transferred to Birkenhead to Liverpool. He said that if the combined stores claim for post-possession losses was not accepted as a matter of principle, then the £42,814 should be added to this part of the claim making a total of £91,218. This £42,814, along with the amount of £121,597 accepted by the council for post possession losses on the Liverpool only basis (totalling £164,411) was more than the total that was being claimed under post possession losses for the combined stores (£148,879). This proved, Mr Lazarevic said, that the claimants were mitigating their losses, and it should therefore be paid.

117. Mrs Ewing agreed that it was reasonable for the claimants to have taken the storage units whilst continuing to look for alternative premises post closure of Liverpool, and that they had successfully mitigated the losses to the agreed extent of £121,597 (claimed under the post possession losses). However, whilst she did not think that the storage and staff costs should be recoverable in addition, she did accept Mr Lazarevic's argument that the total losses claimed on the combined stores basis at £148,879 was less than the sum of the accepted £121,597 and the additional £42,814.

118. I agree with Mrs Ewing's concession that it was entirely reasonable for the claimants to have taken the Uveco units, as I have already accepted that they had every intention of finding alternative premises in Liverpool city centre, even after the date of entry. Also, in order for them to achieve the reduction on losses that would otherwise have occurred, the stock did need to be stored. The additional staffing costs also seem to me to be an acceptable part of the claim in mitigation, as they were evidently required to create these savings. I would therefore determine this part of the disturbance claim at £91,218 (£48,403 + £42,814) and in my view the £42,814 element, being post-possession CPO related costs, should not be treated as a deduction from the value of the business. However, I note that Mr Lazerevic said in answer to a question from me, that it was only the combined stores sum of £148,879 that was being claimed rather than the whole £164,411 that arose on the Liverpool only basis. Thus, I need to deduct £15,532 and, rather than disturb the agreed pre-possession CPO related costs, determine post-possession CPO related costs at £27,282.

7. Post possession losses

119. On the Liverpool only basis, these were agreed at £121,597.

Summary

120. In the light of my findings above, the compensation can be summarised as:

Value of leasehold interest	£ 29,000
Pre-possession losses	£ 97,678
Pre-possession CPO related costs	£ 48,403
Post possession CPO related costs	£ 27,282
Value of the business	£ 600,000
Deductions	(£224,603)
Post possession losses	£ 121,597
	£ 699,357

Say £700,000

*	Leasehold interest	£ 29,000
	Net assets	£147,200
	Pre-possession CPO related costs	£ 48,403
		£224,603

121. This determines the substantive issues in this reference, and I determine that the council shall pay the claimants compensation in the sum of £700,000 less any sums paid under the terms of the Agreement together with interest at the standard rate from 1 October 2004. The parties are now invited to make submissions in writing as to costs and the decision will become final when, and not before, they are decided. At that point, the provisions relating to the right of appeal in section 3(4) of the Lands Tribunal Act 1949 and Order 61 rule 1(1) of the Civil Procedure Rules will come into operation.

Dated 14 February 2007

(Signed) P R Francis FRICS