

DECISION

1. This is a reference in relation to a claim for compensation in relation to three Purchase notices which the Claimant contends were served on Herefordshire Council. On 13th February 2006 the President ordered that there be determined as a preliminary issue:

“ Whether the Lands Tribunal has jurisdiction to determine the claim”

2. In this matter the Tribunal is required to decide, as a preliminary issue, whether the Tribunal has jurisdiction to over a claim made by the Claimant Richard White of Chandos Farm, Rushall, Ledbury HR8 2PA against Herefordshire Council, which is the local planning authority (“ LPA”) in respect of land at 83 Tower Hill, Upper Dormington near Hereford. The Claimant contends that he has served 3 Purchase Notices pursuant to section 137 in Part VI of the Town and Country Planning Act 1990 (“TCPA 1990”) on 28th March 2003, 6th May 2003 and 21st June 2003. In each Notice he contended that, by virtue of a refusal of planning permission of 6th September 2002, the land was for that reason incapable of reasonably beneficial use in its existing state and could not be rendered so by the carrying out of any permitted development. Mr White contends that by virtue of section 143(2) of TCPA 1990, those Notices were deemed confirmed by the 28th December 2003, 6th February 2004 and 21st March 2004 respectively.

3. A fourth notice, treated by the parties as dated 3rd September 2003, was the subject of a response notice by the LPA on 2nd December 2003 and was sent to the First Secretary of State for confirmation under s 139 TCPA 1990. After he had proposed not to confirm it by letter of 24th February 2004 , and an inquiry was held by his Inspector. The FSS decided by decision letter of 10th November 2004 that he would not confirm it, on the grounds that the land was reasonably capable of beneficial use in its existing state.

4. The chronology was as follows

Notice of refusal to grant planning permission to reuse the remains of 83 Tower Hill as a dwelling (reference CE2002/1943F)	6 September 2002
The first purchase notice “A”	28 March 2003
The second purchase notice “B”	6 May 2003
The third purchase notice “C “	21 June 2003
The fourth purchase notice “D”	3 September 2003
The response notice issued by the Council	2 December 2003
The “intermediate” decision of the Secretary of State not to confirm the fourth purchase notice dated 3 September 2003	24 February 2004
Inquiry held to consider Mr White’s appeal	24 August 2004
Inspector’s report on Mr White’s appeal	7 September 2004
The Secretary of State’s decision letter	10 November 2004
Claimant’s Notice of Reference	20 April 2005

5. The Claimant has maintained since before the inquiry was held that the first three notices had been effective, and that as a result the “deemed confirmation” provisions of the Act apply. The LPA have contested the validity of the first three Notices, but now, while accepting that some or all may have been valid, dispute that the “deemed confirmation” provisions apply.

6. I shall approach this Decision as follows

- a. The statutory framework
- b. The facts
- c. The relevant issues
- d. The case for the Acquiring Authority
- e. The case for the Claimant
- f. Discussion and conclusions
- g. Determination of preliminary issue.

The Statutory Framework

7. The Purchase Notice procedure is found in Part VI of TCPA 1990, but was first enacted in its original form in the predecessor Act of 1947. It is designed to compensate landowners whose land is incapable of reasonably beneficial use, where planning permission for development has been refused. The system is as follows.

8. S 137: within 12 months of a refusal or conditional grant of planning permission (or other orders of no relevance to this case) an owner of land (or other interested person) who claims that certain conditions are satisfied, may serve on the LPA a “purchase notice” requiring that LPA to purchase his interest “in accordance with this Chapter” (sections 137(1)(a) and (2) TCPA 1990). Those conditions are that the land has become incapable of reasonably beneficial use in its existing state, and that the land cannot be rendered so capable under an existing planning permission or one which he is told by the LPA or the First Secretary of State (“FSS”) would be granted (S 137(3) TCPA 1990).

9. Pursuant to s 137(2) a regulation has been made on the making of an application. By Regulation 12 of the Town and Country Planning General Regulations 1992, the claim for compensation from an LPA “ shall be made in writing, and shall be served on that authorityby delivering it at the offices of the authority.....or by sending it by pre-paid post”. A claim must be made within 12 months of the decision in question (Reg 12(2)).

10. There are no other statutory requirements relating to the Notice. However a current Circular was issued by the predecessor Secretary of State in April 1983 (“ Purchase Notices 13/83”). It refers to the equivalent provisions of the Town and Country Planning Act 1971 (Part IX), and gives advice on the Purchase Notice system. It also includes at Appendix 1 a “ Model Form of Purchase Notice” which sets out a simple one page claim form. However paragraph 5 of the Circular states that there is no official form, and while noting the model form states “ However a letter addressed to the Council.....will suffice.” It will be noted that neither the Act, nor the Regulations, nor the Circular nor the model application form require that the Claimant submit evidence as to ownership (or indeed anything else) within the form, or at the same time.

11. The Lands Tribunal has held that the Notice must relate to the whole of the land to which the planning refusal related (*Cook and Woodham v Winchester City Council [1994] 69 P & CR 99*), and that it must be served by the owner or owners of all of that land (*Smart and Courtenay Dale Ltd v Dover RDC [1972] 23 P & CR 408*). Paragraphs 7-11 of Circular 13/83 are to the same effect.

12. Once the Notice is served, there are steps to be followed by the LPA (s 139 TCPA 1990) and then by the FSS (s 140- 142). Because of the nature of the submissions made, I should set out the relevant parts of s 140-1.

13. The relevant parts of section 140 read:

140 Procedure on reference of purchase notice to Secretary of State

(1) Where a copy of a purchase notice is sent to the Secretary of State under section 139(4), he shall consider whether to confirm the notice or to take other action under section 141 in respect of it.

(2) Before confirming a purchase notice or taking such other action, the Secretary of State must give notice of his proposed action--

(a) to the person who served the purchase notice;

(b) to the council on whom it was served;

(c) [in England] outside Greater London--

(i) to the county planning authority and also, where that authority is a joint planning board, to the county council; and

(ii) if the district council on whom the purchase notice in question was served is a constituent member of a joint planning board, to that board;

.....

.....

(3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons on whom it is served may require the Secretary of State to give those persons an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(4) If within that period any of those persons so require, before the Secretary of State confirms the purchase notice or takes any other action under section 141 in respect of it he must give those persons such an opportunity.

(5) If, after any of those persons have appeared before and been heard by the appointed person, it appears to the Secretary of State to be expedient to take action under section 141 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

14. The relevant parts of section 141 (subsections (1) and (5)) read:

141 Action by Secretary of State in relation to purchase notice

(1) Subject to the following provisions of this section and to section 142(3), if the Secretary of State is satisfied that the conditions specified in subsection (3) or, as the case may be, subsection (4) of section 137 are satisfied in relation to a purchase notice, he shall confirm the notice.

(5) Any reference in section 140 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the purchase notice either on the grounds that any of the conditions referred to in subsection (1) are not satisfied or by virtue of section 142.

15. Section 143 deals with the effect of the Notice. I should set subsections (1)-(3) of it in full

143 Effect of Secretary of State's action in relation to purchase notice

- (1) Where the Secretary of State confirms a purchase notice--

(a) the council on whom the purchase notice was served, or

(b) if under section 141(4) the Secretary of State modified the purchase notice by substituting another local authority or statutory undertakers for that council, that other authority or those undertakers,

shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the relevant provisions, and to have served a notice to treat in respect of it on such date as the Secretary of State may direct.

- (2) If, before the end of the relevant period, the Secretary of State has neither--

(a) confirmed the purchase notice, nor

(b) taken any such action in respect of it as is mentioned in section 141(2) or (3), nor

(c) notified the owner by whom the notice was served that he does not propose to confirm the notice,

the notice shall be deemed to be confirmed at the end of that period, and the council on whom the notice was served shall be deemed to be authorised as mentioned in subsection (1) and to have served a notice to treat in respect of the owner's interest at the end of that period.

- (3) Subject to subsection (4), for the purposes of subsection (2) the relevant period is--

(a) the period of nine months beginning with the date of service of the purchase notice; or

(b) if it ends earlier, the period of six months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State.

16. Circular 13/83 is still extant. It contains a number of passages of relevance, which appear as Appendix 1 to this Decision.

17. A model form of Purchase Notice is also provided by the Circular. It appears at the end of the Appendix to this Decision.

The Facts

18. The parties called no witnesses. There was an agreed statement of facts, and the Tribunal had received witness statements from Mr Richard Martin White (the Claimant) and from Mr Michael Anthony Lewis Jones, Legal Executive Advocate in the employ of the Respondent authority. However at the hearing both advocates agreed that the witness statements could be admitted. They also – and in my view quite properly – agreed that one should look at the documents and draw inferences and conclusions from them.

19. A chronology was agreed. I have set out the salient parts above.

20. In my view it is helpful to go through the Notices and consider what happened to them. I shall set out the findings I make.

21. Notice A was served on 28th March 2003. It referred to No 85 Tower Road in the first paragraph, but to No 83 in a later paragraph, while the plan and relevant reference number showed that it referred to No 83. That Notice was received by the LPA, as it acknowledged on 9th April 2003. The LPA took no action on that Notice, and did not forward it to the Secretary of State. While the Notice referred at one point to section 137 of the 1971 Act (as the model Notice does also) it followed the model Notice and referred to the current provision in its title. It asserted that the Claimant was the owner and required that the Council purchase his interest in the land. The Notice reads as follows

“Town and Country Planning Act 1990

Purchase Notice (section 137)

To the Chief Executive and Clerk of Herefordshire Council with reference to land at 85 Tower Hill, Upper Dormington, Hereford subject of a planning decision, reference CE2002/1943/F by Herefordshire Council dated 6th September 2002, refusing planning permission or granting planning permission subject to conditions,

I serve notice under section 180 of the Town and Country Planning Act 1971, on the Herefordshire Council and I claim that:

a) the land has become incapable of reasonably beneficial use in its existing state, and

b)and

I hereby require the Council to purchase my interest in the said land, namely 83 Tower Hill, Upper Dormington , Hereford

I confirm that the area of land concerned with 83 Tower Hill is the exact curtilage, as shown on the plan with the planning application.

Full name and address of owner: Richard White, Chandos Farm, Rushall, Ledbury, Herefordshire HR8 2PA

Signed (Richard M White)

Date 28/3/03”

22. On 6th May 2003, the Claimant served a document which I shall call Notice B. Although mislaid by the LPA until September 4th 2003, I find that the LPA received it soon after 6th May 2003. It was in exactly the same terms as the Notice A, save that it now gave the right address. It was accompanied by a letter which stated that “I enclose a further copy of the Purchase Notice, as I noticed there was a typographical error in the previous notice.” (I should add that it is agreed between the parties that the copy later relied on by the Claimant was subsequently altered by the reference to the 1990 statutory provision and the insertion of the word “ freehold” before the word “ interest”). That Notice and its accompany letter was, I find, received by the Council, as it now accepts.

23. On 18th June 2003, the County Secretary and Solicitor of the LPA wrote with regard to Notice A. He stated that it was incumbent on the LPA to consider the validity of the Notice before deciding whether to serve a Response Notice on the Secretary of State together with the Purchase Notice itself. It listed three reasons why the Notice was invalid. It contended that the notice referred to 85 Tower Hill rather than 83 Tower Hill to which the planning reference decision related, but noted that the plan and photographs referred to 83 Tower Hill, and argued that it was invalid as a result. The LPA went on to argue that the Notice had cited the wrong provision, in that it should have referred to the current Act. It also argued that “although you have required the Council to purchase your interest in the land it is necessary that you state the nature of that interest.” It concluded by saying “ Upon receipt of a valid Notice the Council will then be able to respond appropriately.” That approach is puzzling. While the point about

the address was a reasonable one, the other two are not. The heading of the Notice did refer to section 137 of the TCPA 1990, which was the current provision. The reference to s 180 of the 1971 Act cannot have misled the LPA for a second. As to the third point, it is simply false, as the Notice expressly identified that the interest relied on was that of owner. Section 137 of the Act itself refers to a claim by “ any owner of the land.”

24. Within 3 days of that letter (and within fewer of its receipt) the Claimant sent a third Notice C together with an accompanying letter , both dated 21st June 2003. The letter was typed, but (as is agreed by the LPA) some of the words were crossed out by hand, and a full stop inserted after “ Notice”. It read , with deletions:

“ Further to your letter of the 18th June, please find enclosed my Purchase Notice. ~~amended in accordance with your instructions~~”

25. The Notice read

“Town and Country Planning Act 1990

Purchase Notice (section 137)

To the Chief Executive and Clerk of Herefordshire Council with reference to land at 83 Tower Hill, Upper Dormington, Hereford subject of a planning decision, reference CE2002/1943/F by Herefordshire Council dated 6th September 2002, refusing planning permission or granting planning permission subject to conditions,

I serve notice under section 137 of the Town and Country Planning Act 1990, on the Herefordshire Council and I claim that:

- a) the land has become incapable of reasonably beneficial use in its existing state, and
- b)and

I hereby require the Council to purchase my freehold interest in the said land, namely 83 Tower Hill, Upper Dormington , Hereford

I confirm that the area of land concerned with 83 Tower Hill is the exact curtilage, as shown on the plan with the planning application.

Full name and address of owner: Richard White, Chandos Farm, Rushall, Ledbury, Herefordshire HR8 2PA

Signed (Richard White)

Date 21st June 2003 ”

26. One can use strikeouts and underlining to show the changes from Notice A

“Town and Country Planning Act 1990

Purchase Notice (section 137)

To the Chief Executive and Clerk of Herefordshire Council with reference to land at ~~85~~ 83 Tower Hill, Upper Dormington, Hereford subject of a planning decision, reference CE2002/1943/F by Herefordshire Council dated 6th September 2002, refusing planning permission or granting planning permission subject to conditions,

I serve notice under section ~~180~~ 137 of the Town and Country Planning Act ~~1971~~ 1990, on the Herefordshire Council and I claim that:

- a) the land has become incapable of reasonably beneficial use in its existing state, and
- b)and

I hereby require the Council to purchase my freehold interest in the said land, namely 83 Tower Hill, Upper Dormington , Hereford

I confirm that the area of land concerned with 83 Tower Hill is the exact curtilage, as shown on the plan with the planning application.

Full name and address of owner: Richard White, Chandos Farm, Rushall, Ledbury, Herefordshire HR8 2PA

Signed (Richard M White)

Date ~~28/3/03~~ 21st June 2003”

27. The LPA wrote again on 18th July 2003. The County Secretary and Solicitor described receipt of “ your revised Purchase Notice.” He now raised a new issue namely the ownership of a track leading to the site, and referred to the Claimant having informed the LPA in the past of litigation having taken place about the track, and that there had been no determination as to ownership. He stated that “ I advise that either you submit a revised plan dealing with the site around No 83 only and let me have sight of your deeds confirming your ownership of same or that you provide title to the track as well. It would be necessary to amend the preamble of your Notice accordingly.” He went on to indicate that he would not determine the validity of the Purchase Notice at that time but asked for a response within 14 days, and reminded the Claimant that the deadline for submission was 6th September 2003.

28. The Claimant responded by taking a revised Notice to the Council Offices. I shall call it Notice D. The County Secretary and Solicitor in a letter of 8th September 2003 referred to it as an “ Amended Notice.” Notice D was in precisely the same form as that of the 21st June 2003, including that date, save that at the bottom these words appeared

“Plan attached 2nd September 2003”

29. The Plan was exactly the same plan as had previously been provided.

30. I shall reach conclusions below, but it should be noted that the LPA had not asked for a further Notice in its letter of 18th July 2003. It had asked for a revised plan and an amendment of the Notice served on 21st June 2003.

31. On 12th September 2003 the Claimant wrote to the Planning Inspectorate enclosing copies of Notices A and B. He referred to Notice A as having been served in April, but identified Notice B as having been served on 6th May 2003 to correct the mistaken reference to No 85 Tower Road. He told the Inspectorate that there was some doubt whether the Council had received Notice B. He then referred to them having been provided with a copy of the planning application plan. He asked the Inspectorate to say

“whether you believe any, or all of the above alleged defects were unremediable and hence the Council were within their rights to claim the notice was invalid. If the notice should have been transmitted to the Secretary of State, that should have been done by the 6th of August and has not been. Could you confirm if the Council are deemed to have accepted the notice if it has not been passed to the Secretary of State, or what other action I should take to progress this purchase notice. “

32. On 19th September 2003, the County Secretary and Solicitor wrote to the Claimant asking him to agree that the 3 month period for the response notice ran from 3rd September 2003. On

1st December 2003 the Claimant wrote to the LPA. He referred to both 83 and 85 Tower Hill. Both had been the subject of purchase notices. In the case of 83 Tower Hill, he stated as follows

“I telephoned you in September regarding the purchase notice for 83 Tower Hill. I explained my surprise that you had not made any response to the purchase notices served on the Council earlier in the year, your response was that one of the purchase notices was invalid. I accept the purchase notice served on the 25th March was invalid, due to the incorrect address. The Council have not stated that the purchase notices served on the 6th May or the 21st June were invalid, nor have I received a response to those notices. I sent the second purchase notice in June, in an effort to be amenable to your comments and you had not asked for a copy of the planning application plan, which the LPA held. In August you provided me with a copy of the plan from the LPA and asked me to confirm that this was indeed the planning application plan. At no time did you inform me that the previous notice was invalid and I merely attached the plan to the notice and returned it to you. With reference to your letter of the 19th September, I do not think it is for me to agree the timetable with you, but for the Minister.

In July you informed me a response would be offered shortly and asked if you could view my title deeds, which was not necessary until such time as the notice would have been accepted or confirmed, nevertheless I complied with your wishes. A response should have been received by the 6th of August and I would have thought that, if the Council do not want to purchase the property, their treatment of the notice is most unusual as it would need to be submitted to the Minister as soon as possible, even if further information is required from the applicant. It is now December and I still have not received a response from the Council, despite the comments in your letter of the 19th September.”

33. On 2nd December 2003, the LPA provided its response notice, settled by Counsel. It set out reasons why it resisted the site was reasonably capable of beneficial use. It was silent about the date of the notice to which it referred, but given the terms of the letter of 19th September 2003, must be taken to refer to what the LPA regarded as the Notice of 3rd September 2003, namely Notice D.

34. The LPA referred one notice to the FSS, namely Notice D of 3rd September 2003.

35. On 24th February 2004, the FSS set out his proposed decision. He referred to the Purchase Notice as that served on 3rd September 2003. He proposed not to confirm it, on the basis that it was reasonably capable of reasonably beneficial use. The FSS said nothing about any of the other Notices A to C. He reminded the parties that they had a right to be heard, and gave them until 24th March 2004 to communicate with the Planning Inspectorate make a written request to be heard.

36. It follows from the above that

- a. Over 9 months had elapsed since Notice A and B were served before the Secretary of State gave his proposed decision
- b. Less than 9 months had elapsed since Notices C and D were served, but if Notice C was valid, the Council's response was over 2 months late.

37. On 2nd March 2004, the Claimant wrote to the relevant officer of the Inspectorate. He wrote as follows

“Thank you for your letter, received on the 27th February 2004.

I have been in correspondence with your office because the valid date you appear to be working on is the 3rd September 2003. I refer you to my letter of the 1st December 2003, of which you hold a copy but I am enclosing another. I clearly set out to the Local Authority the history of the three purchase notices I served on Herefordshire Council last year. The first notice, which was served on the 28th March, was invalid as the address was incorrect (see Herefordshire Council's letter 18th June 2003). In the letter of 2003 no mention is made of the Herefordshire Council's letter 18th June 2003). In the letter of 2003 no mention is made of the lack of plan, but merely the reference to the plan which the LPA held in their office with the planning file.

I served a second notice on the council on the 6th May 2003 and enclose a copy of the notice and covering letter (unfortunately my file copy is amended in biro, but the correct purchase notice served on the Council is without the biro amendments). I was informed by the Planning Inspectorate that the second two points in the letter of the 18th June would not invalidate the purchase notice, hence I have no idea why Herefordshire Council have not forwarded a copy of this notice to you.

I sent a further purchase notice to the Council, following their letter of the 18th of June, although I had no reason to believe the earlier notice of the 6th May was invalid. I received the enclosed letter of the 18th July, which again made no reference to the lack of a plan with the purchase notice. In the third paragraph it clearly states “the only remaining point I need to come back to you on, relates to your ownership of the site”. I immediately had my title deeds delivered to Mr Jones for clarification. It had taken me two months to register my original planning application, as the Planning Officer insisted that I include the access roadway (upon which I had been granted a right of way by Bristol County Court) as part of the land relating to the planning application. The Officer then insisted that I should advertise to the owner of the access road and furthermore, serve a notice on the claimant to the land from the court case, Mr Foley. Due to this fact there were two plans showing the ownership of the site for the planning application, one showing the cottage and garden and the second

showing the access road. Nevertheless, once Herefordshire Council had seen my title deeds and the court order, there could be no doubt in their minds of exactly the area of land owned by me.

At the end of August 2003 I had a telephone call from Mr Jones asking me to call at his office to clarify one last item regarding the purchase notice. I enclose, marked A, the purchase notice and two plans which Mr Jones handed to me. You will see that someone had deleted one small item on the notice and crossed out the date. I believe this must have been done by the Planning Department, as their fax number with a date of the 27th August 2003, is on the bottom of the purchase notice and the two plans from the planning application are in colour (on the original copies handed to me, which I still hold). The following day I added the plan to the notice and returned it to Mr Jones. I put on the bottom of the notice that the plan had been added on the 3rd of September, but the Council had held the plans since the planning application was made and they had given the plans to me. In circular number 13/83, 4-210/2 it clearly states "there is no official form and that the notice should accurately identify the land concerned". In point 27 the notice states "He cannot begin consideration of a notice without copies of the purchase notice any accompanying plan, the counter notice, the planning application with plans". Note it says "any accompanying plan" and does not insist on a plan and, furthermore, my reference to the exact cartilage shown on the plan with the planning application could have been sent to you, as requested in the circular. The circular clearly states the onus is on the LPA to transmit the purchase notice to the Planning Inspectorate at the earliest possible time (even if they are waiting for any further information) to allow the Planning Inspectorate sufficient time to determine the notice.

I received two letters, of the 8th and 19 September, I then immediately telephoned Mr Jones and stated that there was no reason for the earlier notices to be invalid and could he forward me the council's response immediately. He said he would try to do that and would immediately contact his planning colleagues. Finally, in desperation, I wrote, on the 1st December, and the following day received a hand couriered response from the LPA. I enclose a copy of the acknowledgement to my letter of the 1st December, dated the 10th December and it should be noted that he did not dispute the validity of the notices served on the 6th May or the 21st of June.

Once I received confirmation that the purchase notice had finally been sent to the Planning Inspectorate, I telephoned to obtain confirmation on what would be the accepted date of the purchase notice, I was informed the date accepted by the Inspectorate would be the date on the purchase notice on which I had originally been served on the Local Council.

I would be most grateful if you could confirm why you have used the 3rd of September as the valid date, when I was informed it would be the 21st of June.

When the LPA hand delivered the response notice to me, on the 3rd December, there was no other information included in the envelope. I now understand the LPA had to submit to you a number of other documents and I should also have received copies of those. I never received any further documentation, either from you or the LPA, except for your letter of the 16th December. I see from that letter that the purchase notice was not sent to yourselves until the 9th of December. Am I correct in assuming that I should have received copies of all the 9th of December. Am I correct in assuming that I should have received copies of all documentation which was sent to you?

Due to the 28 day deadline stated in your letter of the 24th February, I would be grateful if you could please reply to this letter within the next 14 days.”

38. Further correspondence occurred. It is to be noted that on 27th April 2004 the LPA wrote to the Inspectorate that

“I have spoken with you concerning Mr White’s letter to the Inspectorate of 5th April. He is correct in that my letter to you of 26th March was, I regret, inaccurate in one of its details. With regard to paragraphs 1 and 2 of that letter I stated that Mr White’s Notice of 21st June ‘asserted ownership of a track which runs south easterly from the property’. In fact the point as I have been reminded by my planning clients was that no plan at this stage was attached to the Notice at all. This was remedied by Mr White on 3rd September when he lodged a further Notice (still dated 21st June) with a plan attached. There was also a minor amendment to the Notice stating that a plan was indeed attached to it. I trust this makes matters clear.

The Council does not accept that it was served with a Purchase Notice on 6th May 2003. This has been made clear in previous correspondence. There is nothing I can usefully add to that. With regard to paragraph 6 of my letter of 26th March I can only reiterate that the Council did not accept any subsequent Purchase Notice until 3rd September.

39. On 7th May 2004 the Claimant wrote again to the LPA, as follows:

“Thank you for your letter of the 27th April and for informing the planning inspectorate that your stated reasons for not taking the relevant date of the 21st June was completely without basis. However, you have now informed the inspectorate that the date of the 21st June was not relevant, as there was no plan attached to the notice. This is the first time that I have had definite confirmation that this is the reason that my notice of the 21st June was invalid. Why did you not inform me last summer that the 21st June notice was invalid? Or at the very least, after my letter of the 1st December?

The act states that there need not be a plan with the notice, but that the notice should clearly indicate the area of land to which the notice relates. I cannot think of a clearer way of describing the land as ‘the area of land concerned with 83 Tower Hill is the exact cartilage, as shown on the plan with the planning application’, from which this purchase notice originated.

The matter was confused by you, as you asked me to attach the plan you received from the LPA on the 28th of August to the notice, you did not say that in so doing you would be alleging the notice of the 21st June was invalid. Furthermore, you did not reply to my letter of the 1st December, except to acknowledge it, you did not inform me that you were asking the planning inspectorate to substitute a new date of September for the original service date of the 21st June. You did not send e all the information, including your letter, which you sent to the planning inspectorate on the 10th December, until I received this information after requesting it from the inspectorate at the end of February.

I would be grateful to receive a precise explanation as to why the council could not have sent copies of the purchase notice, the counter-notice, the planning application with plans and the decision on which the purchase notice was based within the three month period. I also require an explanation as to why I was not informed, in accordance with the act, that the Council should inform the server of the notice that, in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it.

The onus has always been on the council to forward the notice to the planning inspectorate, as soon as possible, to give them adequate time to process the notice within the nine month period.

We have now been informed, by the planning inspectorate, that the notice for 85 Tower Hill, which you forwarded within the three month period, was in fact invalid. Hence there was no reason for you not to have forwarded the notice for 83 Tower Hill, even if you had any suspicions that it might have been invalid.

If you do not receive a precise explanation to the matters raised in this letter, I will assume that you accept the valid date of service of the notice has always been 21st of June.”

40. The public inquiry took place before an Inspector on 24th August 2004. The LPA prepared a “ Position Statement.” It now contended that

- a. Notice A was invalid because it referred to No 85
- b. Notice B was never received by the LPA

- c. Notice C was served, but the County Secretary and Solicitor

“was concerned about the extent of the land involved”,

and described a meeting taking place at the end of August 2003, which led to

“ Mr White delivers the amended notice and plan on 3 September 2003”

- d. It then stated

“ The Secretary of State on 24th February 2004 writes to Mr White declining to confirm the notice dated 21st June 2003. He therefore took the requisite action within the relevant period of 9 months from 21st June 2003”

- e. The fact that the response notice was served outside the 3 months period did not result in deemed confirmation.

41. It will be apparent from the above that the LPA was then contending that it had not received Notice B. In fact, as already noted, it now concedes that it had done so, and that its existence was known of since at least 4th September 2003, as is marked on the LPA’s copy of the letter of 6th May 2003. But it was also arguing that the notice of 21st June 2003 (Notice C) was valid, and that Notice D of 3rd September 2003 was an amendment.

42. The Inspector described the Notice before him as “ dated ‘21st June 2003’ (but annotated ‘Plan attached 2nd September 2003’)”. At paragraphs 18 and 19 he described the Claimant’s case on the Notices. He summarised his case as being that each of the four Notices was valid, and that while a failure to respond to a Notice did not lead to confirmation, the 9 month period was running whether or not there was a response. The Claimant argued to him that there was deemed confirmation of Notices A, B and C.

43. He set out the LPA’s case at paragraph 30. He states that the Council argued its case as per the “Position Statement” but he records their case as being that the first valid notice was served on 3rd September 2003, which was the relevant date for the 3 month and 9 month periods. Of course in the “Position Statement” the Council had expressly accepted that the period ran from 21st June 2003.

44. He set out his conclusions at paragraphs 38- 40. He concluded that the Secretary of State could only deal with the Notice sent to him under section 139(4). He stated that the Secretary of State could not pronounce on validity, date of service or whether deemed confirmation had occurred. He stated that “ there are other avenues which can be used to settle such questions.”

45. He then held that because the date at the foot of Notice D is 3rd September 2003, and that is the date upon which the LPA received Notice D in its current form, that is the date upon which service took place and is the relevant one. He expressed the view that “an altered and re-served notice is a different notice.” He also concluded that even if Notice C was a valid notice, less than 9 months elapsed before the date of the Secretary of State’s proposal letter.

46. He went on to recommend against confirmation on the merits. The FSS issued a Decision Letter on 18th November 2004. It accepted the Inspector’s recommendations on the merits and refused to confirm the Notice. On the service and validity issue, he accepted his Inspector’s reasoning and conclusions.

47. The Claimant thereafter maintained his position that the first three Notices A B and C were valid.

The Relevant Issues

48. No issue arises with regard to Notice D. That was regarded as a valid Notice by both LPA and the FSS, and was not confirmed. It follows that no liability to compensate exists under Notice D. The arguments on jurisdiction relate to Notices A, B and C. The issues which arise on those facts are

- a. In the case of Notice A, did deemed confirmation occur before 24th February 2004?
- b. In the case of Notice B, did deemed confirmation occur before 24th February 2004?
- c. In answering questions (a) and (b) one must consider
 - i. The validity of Notice A
 - ii. The validity of Notice B
 - iii. The effect of Notice B on Notice A; did it amend it, replace it, cause it to be withdrawn, or leave it extant?
 - iv. The effect of Notices C and/or D on Notice A or B; did it amend it, replace it, cause it to be withdrawn, or leave it extant?
 - v. The effect of a Notice which is received by an authority but not responded to or sent to the Secretary of State.

- d. In the case of Notice C, did deemed confirmation occur before 24th February 2004?
- e. In answering question (d) one must consider
 - i. The validity of Notice C
 - ii. The effect of Notice D on Notice C; did it amend it, replace it, cause it to be withdrawn, or leave it extant?
 - iii. The effect of a Notice which is received by an authority but not responded to or sent to the Secretary of State.

49. If I determine that any of those Notices were deemed confirmed pursuant to the legislation, then the Lands Tribunal will have jurisdiction to determine the amount of compensation payable.

The Case For The Acquiring Authority

50. The LPA argues as follows

- a. The legislation only permits one Purchase Notice to be in existence at any one time with regard to any particular property. It refers to the use of the singular “Notice” within the relevant sections of the Act. It also refers to the provisions of s 143 (5), which it contends shows that the Act only anticipates that one Purchase Notice can exist at any one time. If one is permitted to have more than one Notice served at any one time, it would cause administrative difficulty;
- b. The “deemed confirmation” in section 143(2) only applies if a Notice has been sent to the Secretary of State under section 139(4). If an authority fails to do so within the requisite 3 months period, the disappointed claimant can issue judicial review proceedings to compel its reference to the Secretary of State. It notes that that is the view expressed in the commentary to section 137 by the authors of the Encyclopaedia of Planning Law and Practice at paragraph 137.13. It is accepted that the timescale is so tight (9 months in all) that any claimant applying for judicial review would have to apply to have his hearing expedited;
- c. An authority is not required to send a Notice it considers invalid to the Secretary of State, which approach is endorsed by paragraph 21 of Circular 13/83.

- d. On each occasion upon which the Claimant served a Notice, he impliedly withdrew its predecessor. Thus, A was withdrawn when B was lodged, B was withdrawn when C was lodged, and C was withdrawn when D was lodged.
- e. Notice D is not to be regarded as an amended Notice C, nor are Notices C or D to be regarded as an amended Notice A or Notice B, nor is Notice B to be regarded as an amended Notice A.
- f. The conduct of the Claimant shows that each of Notices A, B and C was invalid.

The Case For The Claimant

51. The Claimant submits that

- a. There is nothing in the Act which prevents the service of more than one notice. By s 6 Interpretation Act 1978 the use of the singular noun “ Notice” includes the plural unless a contrary intention appears. If a claimant is met by an argument by an local planning authority that there is a defect in his Notice, it would be foolish not to make a further claim so as to protect his position;
- b. Each of the four Notices A, B, C and D was a Notice in its own right;
- c. The “ deemed confirmation” provisions apply if a valid Notice has been served. It is immaterial whether or not it has been passed to the Secretary of State. If it were otherwise, section 143(3)(a) would be quite unnecessary;
- d. The words in the introduction of Circular 13/83 relating to Part II of the memorandum support the interpretation of s 143(2) that time runs whether or not the Council has taken any action to refer the Notice to the Secretary of State;
- e. The ability to take judicial review proceedings to compel the authority to send the served Notice being sent to the Secretary of State does not affect this interpretation. Such proceedings could not be taken until the three month period had expired, so that even if successful, the reference would still be outside the required 3 month period. In any event, the timescale for getting a valid notice accepted (12 months from the date of the original refusal or conditional grant) makes judicial review an uncertain and impractical remedy;
- f. The interpretation put on section 143(2) by the claimant requires no additional words to be read into the section, whereas the LPA’s interpretation requires one

to insert extra words such as “ provided that the Notice has been sent to the Secretary of State under section 139(4);

- g. The feared administrative problems are illusory. All an authority has to do when it gets a second Notice is to respond by way of response notice, or to ask the Claimant if the earlier notice(s) are withdrawn;
- h. It is acknowledged that the Claimant failed on the merits on Notice D, but the point of having the “deemed confirmation” provisions is that a system exists whereby authorities are required to get on with dealing with Notices. If they do not, and the deemed confirmation mechanism bites, it does so whatever the merits are.

Discussion And Conclusions

52. Both parties raise arguments of substance. I start my analysis by looking at the purpose of the provisions in the Act.

53. In my judgement the purpose is to enable a landowner who has been prevented from using his land as he would wish by a refusal or conditional grant of planning permission, to require the planning authority to acquire it, provided that it passes the statutory criteria on being incapable of reasonably beneficial use. The number of such sites is very limited. Both landowner and authority have to observe a tight timescale, and in the landowner’s case, he must file his claim within 12 months of the decision. It is plainly in the public interest that, once the claim is made, it should be proceeded with expeditiously, so that a timetable is set for the acquisition process.

54. In my judgement the ability to be able to serve a further notice is an important safeguard for the landowner. The minimum time for a notice to proceed varies from up to 3 months from service (if the LPA accept the notice and are willing to comply) to a great deal longer. Suppose that an owner who acts expeditiously serves a notice in month 2 after the decision in question, and in month 5 the LPA states that in its view it is an invalid notice for a reason later found to be wrong. He cannot take the risk that the LPA is right, so he cannot simply do nothing, so he must serve another Notice, which he serves in month 6. The LPA could then decide to accept the Notice, or could accept its validity but reject it on the merits, and therefore transfer it to the Secretary of State with a response notice by the end of month 9. If he gives his proposed decision it could well be 5 months later (the time taken in this case) or the end of month 14. He must then allow the parties to be heard, which resulted in this case in a delay of a further 9 months to month 23. If the LPA is right in its arguments to me, it would mean that the Claimant is bound to adhere to his second Notice, resulting in the date for the notice to treat under section 143(1) being put back by between 4 months (the difference between months 5 and 9 and somewhere over 18 months (23 months less 5).

55. That would have happened not because the first Notice was invalid, but because the LPA wrongly treated it as invalid. The Act sets tight timescales of only 12 months for the making of a claim, followed by overlapping periods of 3 months and 9 months respectively and. In that context, slippage of between 5 and 18 months must be regarded as serious.

56. Accordingly, I do not consider that the provisions of the Act show an intention to limit a claimant to one Notice at a time.

57. But in any event, I do not accept the approach of either party or of the Inspector or Secretary of State to the status of the four Notices. There is no reason why a Notice cannot be amended after service, provided of course that the effect of the amendment is not such as to change the nature of the claim. I do not accept or endorse the Inspector and Secretary of State's approach to Notices C and D, which I regard as wrong in law. If the Inspector and Secretary of State are correct, there would not even be a power to amend a notice with the agreement of the authority. In any event I consider that it was open to the Claimant to amend his notice, provided that it did not have a material effect on the nature of the claim. If it did so, it was then for the LPA to determine if it would permit the amendment.

58. In this case, the attaching of a plan to Notice D changed the Claimant's case not at all. The Act does not require the submission by a claimant of a plan with the Notice, and on any reasonable basis the document of 3rd September 2003 was not a new Notice but was an amended version of Notice C, as the LPA accepted and itself submitted to the Inspector. Notice D was only submitted because the LPA had raised the issue of evidence of ownership after Notice C was submitted, not having raised it before. That too did not go to the validity of the Notice, but went to the existence of evidence to support it.

59. I therefore regard Notice D as a Notice served on 21st June 2003, and amended on 3rd September 2003.

60. What then of Notice C? It followed the model Claim Notice precisely, and also responded to the LPA letter of 18th June 2003. In my judgement Notice C was an entirely valid Purchase Notice. It is accepted that the Claimant was the owner of the land at the relevant time. The points taken by the LPA in the letter of 18th July 2003 do not go to its validity at all. I therefore regard Notice C as valid. It was amended on 2nd September 2003, but was valid before the amendment also. I shall consider below whether it itself was an amendment of Notice A or B.

61. As to Notice B, it is accepted by the LPA that the fact that it mislaid it cannot make it invalid. It followed the model claim for a Notice and identified the land in question by reference to the planning application plan. It also identified the interest as that of owner. It referred to both s 137 of the 1990 Act and s 180 of the 1971 Act. I do not accept that that renders it invalid. Any competent local authority officer dealing with the matter would have gone straight to circular 13/83 and/or to the Planning Encyclopaedia and known that s 137 was the re-enacted s 180.

62. It follows that I consider that Notice B was valid when it was served, and that it was served. In my judgement the letter of 6th May 2003 from the Claimant shows that it was intended to amend the error made with regard to the house number in Notice A.

63. Notice A was correct in all respects save one, namely the numbering of the property in one paragraph of the Notice. However when one reads the Notice as a whole, and looks at the accompanying Plan and the relevant planning decision reference, there can have been no real doubt that it referred to No 83. Further, I do not accept that the criticisms in the LPA letter of 18th June 2003 rendered it invalid. I note that the Claimant accepted its invalidity in his letter of 1st December 2003. But validity is a matter of law, and Mr White did not write that letter as a lawyer. I consider that by “invalid” in that letter what is meant is really “needs correction”, which is what was done by Notice B and again by Notice C.

64. It follows in my judgement that Notice B amended Notice A. I also consider that Notice C had the effect of amending Notice A, as itself amended.

65. I therefore conclude that

- a. Notice A was valid. It was amended by Notice B and again by Notice C;
- b. Even if Notice B did not take effect as an amendment of Notice A, Notice B was valid when served;
- c. Notice C was valid. It amended Notice A;
- d. Even if Notice C did not take effect as an amendment of Notice A, Notice C was valid when served.

66. I reject the LPA case on implied withdrawal. There is nothing to be found in the correspondence which suggests that any of the four Notices was withdrawn by the Claimant, and the LPA case to the Inspector that Notice D amended Notice C suggests that this point is not one to which it attaches any weight. The Claimant conducted himself throughout on the basis that none of A B or C was withdrawn.

67. The LPA argument that time does not start running until transmission to the Secretary of State is impossible to reconcile with the terms of section 143 (3) of the Act, which sets a different timescale if there has been a reference. The LPA argument, if accepted, would also enable an LPA to hold up paying compensation by putting forward arguments on validity.

68. I also reject the LPA case on judicial review as a weapon to be used against a slow or uncooperative local authority. While I accept that a transmission to the Secretary of State

could still be made outside the 3 month period – on the basis that the failure by the LPA does not deprive the FSS of jurisdiction – the timetable would be very difficult to achieve unless the quite unrealistic expectation were held that the Administrative Court were always minded to order expedition. A claimant who had waited to anything beyond 6 months after the original decision to make his claim would be almost certainly unable to get his case heard before the 12 months had expired, and one who had waited 8 months would not be able to get it heard within the 12 months even if expedition were ordered. I therefore respectively disagree with the commentary in the Encyclopaedia.

69. I accept that the Circular advises that authorities do not send to the Secretary of State claims which they consider are invalid. That advice must be applied with care and must not be taken too literally. The advice in this paragraph of the Circular does not reflect any provision within the statute, where section 139 merely requires that the authority send the Secretary of State its draft response notice. There is nothing to prevent the Secretary of State (as he did here) forming his own judgement on validity. Indeed in my view he will always be required to consider whether a notice sent to him is valid, and to exercise his own mind independently of the view taken by the authority in question. There is nothing unusual about that. It happens as a matter of routine in the case of enforcement notices served under section 172 ff, where issues arise on whether they are void. Under s 143(2) time will have stopped running once he gives notice of his proposed decision, and if he wrongly holds a Notice to be valid, that will be susceptible to challenge under s 284(3)(f) of the Act. If he wrongly holds it to be invalid, that will be challengeable by way of judicial review, or by the Lands Tribunal accepting jurisdiction because it determines that it was valid. I consider that the advice in that paragraph of the Circular is doing no more than telling local planning authorities to avoid sending him patently invalid notices. In any event the Circular cannot be used to interpret the statute. For these reasons I also consider that the legal approach of the inspector and Secretary of State to jurisdiction was incorrect, and note that in the event the Secretary of State did actually reach conclusions about the validity of Notices A, B and C.

70. I do not consider that a failure by an authority to act as required by the Act alters the deeming confirmation mechanism in favour of the Claimant. The 9 month period would remain unaltered.

71. It follows from the above that I conclude that Notice A was valid, and that the 9 month period expired on 28th December 2003. If I am wrong that the subsequent Notices had amended it, I would also hold that Notice B constituted a valid Purchase Notice, and that the relevant 9 month period expired on 6th February 2004.

Determination Of Preliminary Issue

72. I accordingly determine that the Lands Tribunal has jurisdiction to determine the compensation payable in respect of the Purchase Notice served on Herefordshire Council on 28th March 2003, as amended on 6th May 2003, 21st June 2003 and 3rd September 2003.

73. A letter on costs accompanies this decision, which will take effect when, but not until, the question of costs is decided.

DATED

14th December 2006

(Signed)

Andrew Gilbert QC

Memorandum

This Memorandum is arranged in three parts, as indexed below. References to purchase notices apply also to listed building purchase notices, except where stated otherwise. References to “the 1971 Act” are to the Town and Country Planning Act 1971.

Part I – General Advice and Information on the Services of a Purchase Notice

This Part contains advice on the general statutory provisions for the service of a purchase notice, with particular regard to validity, and certain matters of fundamental importance to be considered by any Council served with a purchase notice, or by the Secretary of State when a purchase notice is transmitted to him, as follows:-

statutory provisions for the service of a purchase notice;

date of service;

service and form of notice;

land and owner;

“reasonably beneficial use”; and

effect of notice.

Part II – Action by Council on Whom Notice is Served

This Part contains advice on action by a council following their receipt of a purchase notice. Failure by a Council to take any action on a purchase notice will result in that notice being deemed to be confirmed on them, under the provisions of section 186 of the 1971 Act. This Part also emphasises the need for any statement of reasons why an authority is not willing to comply with a purchase notice to be explicit. Subjects are as follows:-

validity of purchase notice;

response under section 181(1)(a) of the 1971 Act;

response under section 181(b) of the 1971 Act;

response under section 181(1)(c) of the 1971 Act;

statement of reasons for not complying with the purchase notice; and

transmission of purchase notice to Secretary of State.

Part III – Action Following Transmission of Purchase Notice to Secretary of State

This Part explains the action which the Secretary of State must take following the transmission of a purchase notice to him, and relates primarily to sections 182, 183 and 184 of the 1971 Act. It also covers circumstances where an owner of land may wish both to appeal against a refusal of planning permission and to serve a purchase notice. Subjects are as follows:-

action by Secretary of State;

hearing or local inquiry;

concurrent appeal to Secretary of State; and

Secretary of State's decision.

Part I – General Advice and Information on the Service of a Purchase Notice

Service and form of notice

5. A purchase notice must be served upon the Council of the county district or London Borough in which the land is situated (or the Common Council in the case of land in the City of London); it cannot be served on a county council, or a new town or urban development corporation, or a Government Department. There is no official form required for the serving of a purchase notice, although a model form is given in Appendix 1 to this Memorandum. However, a letter addressed to the Council in whose area the land is situated will suffice. The letter should state that the relevant conditions, in section 180(1) of the 1971 Act, are fulfilled; require the Council to purchase the owner's or owners' interest(s) in the land, giving the owner's or owners' name(s); refer

to the relevant planning application and decision on which the requirement is based; and accurately identify the land concerned. It should be signed by the owner or owners, if possible.

6. Where a purchase is accepted by the Council or confirmed by the Secretary of State the Council is deemed to have compulsory purchase powers and to have served notice to treat, so the price to be paid for the land is determined as if it were being compulsorily acquired.

Land and owner

7. Except in the case of a listed building purchase notice (see paragraph 11 below), the land to which a purchase notice relates must be the *identical* area of land which was the subject of the relevant decision or the relevant order. If the notice relates to more land, it is regarded as invalid. However, if permission has been granted for part of the land to which an application related and refused for the remainder, a purchase notice relating to that remainder can be served.

8. A purchase notice may be served only by an “owner” of the land, as defined in section 290 of the 1971 Act. By virtue of that definition the server must be a person who is entitled, at the time of service of the purchase notice, to receive the rack rent of the land or, if the land is not let at a rack rent, would be so entitled if it were so let.

9. Where land which is the subject of a planning decision, or an order under Part III of the 1971 Act, comprises parcels of land in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice (as served) relates to the whole of the land covered by the planning decision or the order.

10. Where there is more than one site, each the subject of a separate planning decision or order, a separate purchase notice should be served for each individual site.

Effect of notice

20. A purchase notice does not oblige the council to purchase the land in question, unless (a), they state a willingness to comply with it; or (b), it is confirmed on the council by the Secretary of State; or (c) it is deemed to have been confirmed on them under the provisions of section 186. It is also possible, in some circumstances, that the Council will be able to find another local authority, or a statutory undertaker, or a new town or urban development corporation willing to comply with the purchase notice in their place; or that the Secretary of State will confirm the notice on one of these alternative authorities. (See also Part III, paragraph 33 and 38).

Part II – Action by Council on Whom Notice is Served

Validity of purchase notice

21. The Council should first consider the validity of the notice; an invalid notice should not be transmitted to the Secretary of State. Instead, the Council should inform the server of the notice that in their view, for reasons stated, the purchase notice is invalid and they do not propose to take any further action on it. (For points to be examined, please note paragraphs 2 to 11 in Part I of this Memorandum.) If the purchase notice is regarded as valid, the Council should consider whether the conditions set out in sections 180(1) or 190 (1) of the 1971 Act are satisfied. (For appropriate criteria, please see paragraphs 12 to 19 in Part I of this Memorandum.) If the Council regard the purchase notice as valid, they are required by section 181 of the 1971 Act, or paragraph 1 of Schedule 19 to the 1971 Act, to serve a counter-notice on the server of the purchase notice, within three months from the date of service of the purchase notice. The provisions of section 181 have been applied to purchase notices served under sections 188 and 189 of the 1971 Act in respect of orders made under Part III of the 1971 Act.

Response under section 181(1)(a) of the 1971 Act

22. If the Council conclude that the land has become incapable of reasonably beneficial use in its existing state, they may properly accept the purchase notice. If they decide on this course, they are required to serve on the owner by whom the purchase notice was served, a notice stating that they are willing to comply with the purchase notice (section 181(1)(a) of, or paragraph 1(1)(a) of Schedule 19 to, the 1971 Act.

Response under section 181(1)(c) of the 1971 Act

25. If neither the Council on whom the purchase notice was served nor another local authority, a statutory undertaker, or a new town or urban development corporation are willing to comply with the purchase notice, the Council are required to serve on the

owner by whom the purchase notice was served, a notice to that effect. The counter-notice must specify the Council's reasons for not being willing to comply with the purchase notice and state that they have transmitted a copy of the notice to the Secretary of State, together with the statement of their reasons for being unwilling to comply with the purchase notice, on a specified date (sections 181(1)(c) and (3), or paragraphs 1(1)(c) and (3) of Schedule 19. The Council will find that the most convenient way of transmitting the statement of their reasons to the Secretary of State is to send him a copy of the counter-notice which they propose to serve. The specified reasons should be one or more of the following:-

i. that the requirements of section 180(1)(a) to (c) (or section 190(1)(a) to (c)) of the 1971 Act are not fulfilled. The Council should specify the use to which, in their view, the land in its existing state could be put (see paragraph 26 below);

ii. that, notwithstanding that the Council are satisfied that the land has become incapable of reasonably beneficial use, it appears to them that the land ought, in accordance with a previous planning permission, to remain undeveloped; or, as the case may be, be preserved or laid out as amenity land in relation to the larger area for which the planning permission was granted (see Part III, paragraph 31);

iii. that another local authority, statutory undertaker, or new town or urban development corporation, who have not expressed willingness to comply with the notice should be submitted as acquiring authority for all or part of the land;

iv. that, instead of confirming the notice, the Secretary of State should:-

(a) grant the planning permission or listed building consent sought by the application which gave rise to the purchase notice, or revoke or amend specified conditions that were imposed; or

(b) direct the grant of planning permission, or listed building consent, in relation to all or part of the land for some other form of development or works which would render the land capable of reasonably beneficial use within a reasonable time (see Part I, paragraph 15); or

(c) in the case of a purchase notice served under sections 188 or 189 of the 1971 Act, cancel or revoke the order or amend it so far as is necessary to render the land capable of reasonably beneficial use.

Transmission of purchase notice to Secretary of State

27. It is important that a Council who have decided to transmit a purchase notice should quickly send the Secretary of State the information and documents he requires to deal with the notice. He cannot begin consideration of a notice without copies of the purchase notice, any accompanying plan, the counter-notice, the planning application with plans, and the decision on which the purchase notice was based; and, if necessary, a plan to enable him to identify the subject site in its surroundings. These documents should, if possible, accompany the transmission of the notice; but transmission of the notice should *not* be delayed because all the information cannot be provided at the same time. *Any information not immediately available should be sent as soon as possible afterwards.* It must be remembered that failure to supply all the relevant particulars within a reasonable time could lead to deemed confirmation of the notice if, as a result of delay, the Secretary of State is unable to complete his action within the statutory time-limit.

Part III – Action Following Transmission of purchase notice to Secretary of State

Action by Secretary of State

29. Under section 182 of the 1971 Act, the Secretary of State is required to give notice of his proposed action on the purchase notice, and to specify a period, of not less than 28 days, within which the parties may ask for an opportunity of being heard by a person (normally a Planning Inspector) appointed by the Secretary of State before any final determination is made. The period cannot be extended once it has been specified in the formal notification. It is important to note that, where a hearing has been requested and held, and dependent upon the evidence presented, the Secretary of State may depart from his previously stated proposal and reach a different decision on the notice, based on the new evidence. An Inspector conducting a hearing will therefore be prepared to hear, and report, representations made by the parties on any alternative course of action open to the Secretary of State. If there is no request by either party to be heard, the Secretary of State must issue his formal decision in accordance with the proposed course of action previously notified, under section 182(2) of the 1971 Act.

Secretary of State's decision

38. Once the Secretary of State has issued his decision on the purchase notice, he has no further jurisdiction in the matter; and any appeal against his decision is to the High Court, under section 245 of the 1971 Act. If the purchase notice has been confirmed, he has no power to compel either of the parties to conclude the transfer of the land, as he is sometimes asked to do. Matters related to the transfer of the land are for the parties themselves to settle, with, if necessary, reference to the Lands Tribunal if the amount of compensation to be paid cannot be agreed.

Town and Country Planning Act 1971

Purchase Notice (section 180)

Insert name of Council on whom Notice is served	To the Chief Executive and clerk of
Insert address or other identifying particulars of land With reference to land at
Insert reference, name of authority and date of decision. If decision was subject to an appeal to the Secretary of State, also insert Departmental number and date of decision Subject of a planning decision, reference by dated (subject to an appeal to the Secretary of State, reference, the decision on which was dated), refusing planning permission of granting planning permission subject to conditions.
Delete what is not applicable	I/We serve notice, under section 180 of the Town and country Planning Act 1971, on the Council of; And I/we claim that – (a) the land has become incapable of reasonably beneficial use in its existing state, and (b) it cannot be rendered capable of reasonably beneficial use by the carrying out of the development for which permission was granted in accordance with the conditions imposed, and (c) it cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which permission has been granted or is deemed to be granted, or for which the local planning authority or the Secretary of State have undertaken to grant permission; and I/We hereby require the Council to purchase my/our interest in the said land, namely
Insert nature of interest, including, if leasehold, the terms of the lease and rent payable Full name(s) and address(es) of owner(s)
 Signature(s)
 Date
If correspondence to be sent to agent, Insert name and address of agent, With his reference	Agents
 Telephone No
	Reference

Note: This form can be adapted for use in connection with notices served under the provisions of sections 188, 189, 190 and 191 of the 1971 Act.

