



The following cases were referred to in argument:

*Director of Buildings and Lands v Shun Fung Ironworks Limited* [1995] 2 AC 111

*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

*Optical Express (Southern) Ltd v Birmingham City Council* [2005] 2 EGLR 141

## **DECISION**

### **Introduction**

1. This is a decision to determine the compensation payable by City of Bradford Metropolitan Borough Council (the “council” or “acquiring authority”) under the City of Bradford (Central Site) Compulsory Purchase Order 2001 (the CPO) to Castle House Investments Limited (in voluntary liquidation) (the claimant), in respect of the compulsory acquisition of North Block, 3 Market Street, 1-9 Charles Street, 13-15 Cheapside and 35-45 Broadway, Bradford (“North Block”).

2. Mr Christopher Young of counsel appeared for the claimant and called Mr Richard John Morton, a director of the claimant company, who gave evidence of fact relating to the claimant’s involvement in North Block, Mrs Carole Ann Pullan FRICS IRRV, a partner in Donaldsons LLP Chartered Surveyors of Leeds, who gave expert valuation evidence, and Mr Henrie Westlake MRICS a partner in the Leeds office of Knight Frank LLP and head of its Yorkshire Investment Department who produced a report on the matter of investment conditions and yields in the city.

3. Mr Michael Humphries QC, for the council, called Mr Stephen David Hornby MRICS, a partner in the Leeds office of Gerald Eve, Chartered Surveyors, who gave expert valuation evidence, Mr David John Preece MA MCD, a town planner with the council who gave evidence in respect of the planning background to the CPO scheme, and Mr Neil Maclure BSc (Hons) MRICS, the development executive of Westfield Shoppingtowns Ltd responsible for the day-to-day management of the proposed redevelopment scheme, who gave evidence relating to the evolution of the scheme and the prospects for alternative schemes.

4. We undertook an accompanied inspection of the intended redevelopment area, which included the former site of North Block and is now cleared, the city centre generally and the Owlcotes out-of-town shopping centre at New Pudsey on 28 March 2007.

### **The Claim**

5. The claimant, which had acquired the subject land as an investment in September 1998, said its principal case was that, were it not for the CPO scheme, the gross rents receivable on the North Block investment at the agreed valuation date of 20 September 2005 would have been £759,300 with further reversions to £911,100, rather than the £527,500 that was actually being received. At an equivalent yield of 5.5% this produced a (rounded) value of £15,420,000. From this should be deducted the value of head rent payable to the landlord (the council) calculated at £50,940 and which, at a yield of 5.25%, gave net costs of £916,247, hence a net value for the long leasehold interest of £14,503,753 – say £14,500,000. This was revised during the course of the hearing to £14,200,000. In addition, it was submitted that following an accepted period of rental stagnation during the 1990s, city centre rental values

would have increased from 2000, but instead were stagnant due to the uncertainty and delays associated with the proposed redevelopment. The resulting net loss in rents receivable was therefore claimed in the sum of £316,412. Further, on the assumption that two of the retail units that remained vacant at the valuation date would have let more readily if it had not been for the said uncertainty, the empty rates that had been paid on them by the claimant in the sum of £27,875 should also be compensated. A claim for reinvestment costs in the sum of £400,000 was subsequently dropped. Finally, there was a claim for pre-reference costs which was quantified at £16,526 immediately following the hearing.

6. The acquiring authority's case was that, in the absence of the scheme, there would have been no rental growth at the valuation date, the long-term decline of the area that had created the ongoing rental inertia being due to factors other than the scheme. Its valuation expert's estimate of the rental value at the valuation date was £629,350. Allowing for an accepted need for some recoverable capital costs and the deductions for head rent, the valuation was calculated at £8,500,000 on an equivalent yield of 6.25%. The loss of rent was calculated at £82,907 and, as to empty rates, the council said that the maximum claimable amount was £10,470. The principle of pre-reference legal and surveyors' fees was accepted, although the amount claimed was not agreed.

## **Facts**

7. The parties produced an agreed statement of facts and a statement of issues remaining to be resolved. From this, the evidence, and our inspection we find the following facts. North Block was originally built in 1960 as part of the Bradford Central Area Redevelopment and principally comprised 11 ground floor retail units with first floor accommodation above, in an L-shaped configuration with its principal frontages to Broadway and Charles Street. The development "wrapped around" two sides of a listed NatWest bank building which itself had corner frontages to Cheapside and Market Street. There was a third floor extension to 41-45 Broadway and 13/15 Cheapside, with a 4 storey podium of offices above, having access from, and used in conjunction with 41 Broadway (demised to and occupied by Mothercare). North Block was of steel framed reinforced concrete construction, part stone and marble clad with curtain walling to the upper sections.

8. On completion of the construction of North Block and other developments in the early 1960s, the Broadway area became an important shopping focus within the main city centre retail area. Prior to that, the main retail centre had been concentrated upon Darley Street, Kirkgate and the adjoining markets. Following the construction of the Kirkgate Centre in 1973 (a 35,120 sq m (378,041 sq ft) covered shopping centre and 554 space car park), city centre shopping was concentrated into the two areas, connected by Bank Street. It was agreed that the units within North Block having frontages onto Broadway commanded higher rental values than those on Charles Street. The Broadway units faced onto Central House, which included C & A (2 retail floors), W H Smith (2) and BHS (3). The pedestrian areas of Broadway and Charles Street were refurbished in 1996 and included the provision of two retail kiosks in the former and new street lighting. Some further city centre improvements were undertaken by the council in 1998/1999 to include additional pedestrianisation in Hustlergate and through traffic reduction/bus only routes in Market Street, Bank Street and Broadway South, these serving to improve links between the various principal retail areas.

9. The claimant company purchased the long-leasehold interest (expiry date 31 December 2135) in North Block from Hill Samuel Asset Management on 28 September 1998 for £7,000,000 at which time there was a gross rental income of £535,000 pa, reduced to £503,000 pa net after payment of £32,000 ground rent to the council as head landlord. The schedule of tenancies and rents at the time of purchase, and the floor areas and zone analysis (ground floor) of the units was:

UNIT	FLOOR	AREA (Sq ft)	AREA (Sq m)	TENANT	TERM	RENT	
23 Market St	GF ITZA	585	54.35	J D Sports Ltd	1/1/81 – 31/12/05	£40,000 pa	
	FIRST	861	79.99				
1 Charles St	GF ITZA	635	58.99	John Cheatle	1/1/81 – 1/1/01	£42,000	
	FIRST	949	88.16				
3 Charles St	GF ITZA	591	54.90	Foothold Ltd	29/9/90 – 28/9/15	£45,000	
	FIRST	961	89.28				
5 Charles St	GF ITZA	527	48.96	Reed Personnel	27/2/98 – 26/2/05 ex L&T Act 1954	£35,000	
	FIRST	788	73.21				
35/37 Broadway	GF ITZA	1,142	106.09	H Samuel	25/3/75 – 24/12/02	£83,000	
	FIRST	1,259	116.96				
39 Broadway	GF ITZA	636	59.08	Bradford Bulls	30/10/98 – 29/10/03 Ex L&T Act 1954	£35,000	
	FIRST	637	59.18				
41 Broadway	GF ITZA	1,642	152.54	Mothercare UK	4/2/80 – 31/12/05	£200,000	
	1&2 Retail	6,444	598.66				
	3 – 6	10,447	970.53				(Part sublet to BT)
	Basement	1,528	149.95				
7 Charles St	GF ITZA	1,048	97.36	Mothercare UK	4/2/80 – 31/12/05	£55,000	
	FIRST	1,648	153.10				
43 Broadway	GF ITZA	615	57.13	Papertree	24/6/88 – 23/6/03	£55,000	
	FIRST	1,547	143.72				
45 Broadway/ 13-15 Cheapside	GF ITZA	1,382	128.39	* Pizza Hut	*29/9/99 – 28/9/14	*£82,500	
	FIRST	4,122	382.93				

\* Negotiations with Pizza Hut to take 45 Broadway together with 13–15 Cheapside, and convert them to a single unit, were ongoing at the time of the claimant’s acquisition of the investment, and the lease was completed during 1999.

10. In November 1997 the council’s Regeneration Committee approved a redevelopment strategy for a large part of the city centre and, following a proposal made to that committee in April 1998 for a partnership between the council and the Forster Square Development Partnership (“FSDP”) (who had acquired the Central House block), a development agreement, which did not include North Block, was completed on 31 June 1998. Subsequently, a revised development agreement encompassing the wider area of land that was to be subject to CPO

powers was eventually completed on 4 January 2001. In the meantime, an outline planning application was submitted by FSDP on 27 July 1999 for a mixed-use development comprising retail, restaurants, a multiplex cinema and car parking on a 6.4ha (15.8 acre) site bordered by Hall Ings, Well Street, Forster Square, Forster Court, the Royal Mail Building, the Midland Hotel, Market Street and Bank Street (“the scheme”). The site included the northern section of Broadway and North Block. The Secretary of State did not call in the application, and consent was obtained for a development extending to 47,793 sq m (514,456 sq ft) on 17 November 1999. 3 further planning permissions were granted, varying the content and layout of the scheme, and culminating in a permitted retail area extending to 54,625 sq m (588,000 sq ft) GIA. North Block was included in each of those revisions.

11. In November 1999, the council resolved to initiate CPO procedures under s226 of the Town and Country Planning Act 1990 in respect of land which the developer had been unable to acquire by negotiation. The CPO was made on 29 June 2001 and, following a public inquiry at which the claimant had been an objector, the CPO was confirmed without amendment on 16 July 2002. A General Vesting Declaration was made on 29 July 2005, and North Block and other land vested in the council on 20 September 2005, which is the valuation date for the purposes of this reference.

## **Issues**

12. The issues of fact, valuation and law to be determined are:

### *Valuation under Rule (2)*

- i. Whether, in the absence of the scheme for which CPO powers were invoked, a smaller redevelopment scheme that was economically viable and that neither required North Block nor the use of CPO powers was likely to have come forward, and the effect such a scheme would have had on rental values on North Block in the period 1998 to the valuation date, and beyond.
- ii. Whether the prospects for, and delays in, implementing the impending scheme caused rental growth in the Broadway area to be blighted between 1998 and 2005.
- iii. In consequence of (i and/or ii), the appropriate rental value at 20 September 2005.
- iv. The yield rate to be applied to capitalise the net rents received and receivable.

### *Valuation under Rule (6)*

- v. The loss of rental income between 2000 and the valuation date.
- vi. The appropriate compensation for empty rates.
- vii. Pre-reference costs.

## **Case for the claimant: Evidence**

13. Mrs Pullan produced a chronology of events between April 1998 and the valuation date in September 2005. She said that this highlighted the blight caused by the scheme since 1998 due to its continued delay and uncertainty. It meant that the whole area around the subject site had stagnated and nobody had wanted to invest in the area until the future of the scheme was resolved. She accepted that Broadway, like the rest of Bradford, had experienced no retail rental growth during the 1990s. However, in a report written by DTZ Piedad Consulting in May 1998 entitled 'Bradford City Centre: Shopping Prospects, 1996-2005', North Block was described as a good secondary pitch which Mrs Pullan considered showed that the area had not been in terminal decline prior to the scheme. North Block enjoyed pedestrianised frontages and had been able to maintain occupancy rates and passing footfall. It had the benefit of being located in the flattest part of central Bradford, between two railway stations and near the bus station. Vacant units had soon been reoccupied, as Mrs Pullan demonstrated by reference to a series of Goad plans. It was the peripheral areas of Broadway, such as Hall Ings and Petergate, where vacancy rates were chronically high.

14. Mrs Pullan believed that had the North Block been excluded from the CPO its retail units would have been fully let and existing tenants would have renewed their leases upon expiry. In the no scheme world a smaller, more fundable redevelopment of the Central House block would have proceeded quickly and without the need for compulsory purchase powers. North Block would have benefited from its proximity to such a redevelopment and its rents would have risen accordingly.

15. Four pieces of evidence supported Mrs Pullan's argument that the scheme had blighted North Block. Firstly, she referred to a series of Promis Reports produced by Property Market Analysis (PMA) from 2001 onwards that consistently referred to the quietude of the market caused by the uncertainties surrounding the scheme and the negative effect that they had on retailer demand and rental growth. Secondly, the Audit Commission's Annual Letter to the council for 2002/2003 referred to the Broadway area as having suffered from blight since the plans for its redevelopment had first been announced. Thirdly, Mrs Pullan gave evidence of reductions in the rateable value of Broadway shops with effective dates in April 2002. These reductions ranged from 16% to over 40% and she considered this to be evidence of the blighting effect of the scheme, noting that the compiled 2000 rating list rateable values were themselves lower than their 1995 list counterparts and already reflected a degree of blight. Fourthly, Mrs Pullan referred to correspondence in November 2001 and December 2002 from JD Sports, the tenant of 17/23 Market Street, which stated that the lack of evidence to justify an increase in the rent upon review was compounded by the fact that the premises, which form part of North Block, were blighted by the CPO.

16. In the absence of the scheme Mrs Pullan believed that it was unrealistic to assume that rents in North Block would not have risen. The 1998 DTZ Piedad Consulting report showed that Broadway was Bradford's second most important shopping area behind Kirkgate and that pedestrian links between the two had been improved. The redevelopment at Forster Square had improved pedestrian links along Cheapside. In 1998 the new owners of the adjoining Central House block were in discussion with the owners of Forster House and the Petergate Building with a view to expanding their redevelopment scheme. North Block was not

included in the redevelopment proposals at that time but would have benefited from them. The residential redevelopment of much of Little Germany and the lower part of Broadway would have boosted the catchment area of North Block. Mrs Pullan also noted that retail properties in lower Broadway and Market Street that were not directly affected by the scheme had experienced an improvement in their rent relative to prime retail rents between 1994/95 (36-38%) and 2005 (over 40%). Mrs Pullan concluded that in the no scheme world the rental value of the North Block properties would have risen.

17. In order to estimate the level of North Block rents in the no-scheme world Mrs Pullan began by considering prime retail rents in 1998, ie before the blighting effect of the scheme. These were to be found in Darley Street (£90 per sq ft ITZA) and the Kirkgate Centre (said to be £100 per sq ft ITZA). According to the Promis Report of July 1998 the pedestrianised part of Broadway, which had lost status since the construction of the Kirkgate Centre, was £80 per sq ft or 89% of the value of prime retail space in Darley Street. By December 1999 the highest retail rents had risen to £127 per sq ft ITZA but there had been little or no movement since then. Mrs Pullan said that by the valuation date in September 2005 the prime zone A rate in the city centre was £130 per sq ft.

18. The value of retail space in Broadway as a percentage of prime rents reduced markedly in the years following 1998. According to the Promis reports it fell to between 39-48% by December 1999 and thereafter remained at or around 50%. Mrs Pullan attributed this fall to the blighting effect of the scheme. To allow for this she adopted £130 per sq ft ITZA as the prime rental value as at the valuation date and, conservatively, took 80% of this, ie £104 per sq ft, to be the value of the Broadway frontage of North Block in the no scheme world. She then made adjustments to this figure to reflect the difference in quality of the various retail frontages. Both the Charles Street and Market Street properties were taken at 70% of the prime rental value.

19. Based upon these rental assumptions and the known pattern of rent reviews and lease renewals Mrs Pullan constructed a hypothetical rent roll for North Block showing an increase in rents receivable from 2000 until the valuation date, with further reversionary increases until 1 April 2009. The agreed actual rent passing in 2000 was £617,500 pa. Mrs Pullan estimated that in the no scheme world this would have risen to £759,300 pa by the valuation date and to £911,000 pa by 1 April 2009.

20. Each retail unit was valued separately at a yield of 5.25% for the term income and 5.5% for the reversionary income. Mrs Pullan said that the equivalent yield was also 5.5%. She relied upon the evidence of Mr Westlake for the choice of yield. The total capital value of North Block was estimated to be £15,424,371. From this figure Mrs Pullan deducted the capital value of the head rent payable. This was calculated by allowing permitted deductions against the rent received and taking 7% of the remainder. The head rent was then capitalised at 5.25% and deducted as a capital sum from £15,424,371. Mrs Pullan revised her calculation of the capital value of the head rent during the hearing to £1,081,901 (net of purchaser's costs). She also made a net allowance of £55,500 for the cost of works to 39 and 43 Broadway following their vacation and a net allowance of £83,100 in respect of an additional 6 month's void period at 41 Broadway (Mothercare). The total deductions amounted to £1,220,501



which, when deducted from the capital value, gave a figure for the market value of the freehold interest of £14,203,870 which was rounded to £14,200,000.

21. Mrs Pullan argued that as a result of the scheme the claimant had suffered pre-possession losses. She estimated these by calculating the difference between the rents that would have been receivable in the no scheme world and the rents that had actually been received for the period 1 January 2001 to the valuation date. After allowing for the head rent that would have been payable Mrs Pullan estimated the net loss to the claimant to be £316,412.

22. Finally, Mrs Pullan said that in the no scheme world units 39 and 43 Broadway would have let readily. Consequently the empty rates paid by the claimant in respect of those properties, allowing for the saving in head rent, was properly claimable. The net loss claimed under this heading was £27,875.

23. Mrs Pullan refuted Mr Hornby's argument that the 20% fall in rateable values between the 1995 and 2000 lists for properties in Broadway was not related to the scheme. She considered that the Valuation Officer would have had regard to the scheme at the antecedent valuation date for the 2000 list of 1 April 1998. She therefore rejected Mr Hornby's comparison between the rateable values in the 2000 list of properties in Darley Street and Broadway which showed the latter to be between 52.4% and 61.1% of the value of the former. Her own analysis of the rateable values in these locations in the 1995 list, which she produced at the hearing, showed that the Broadway properties had rateable values of some 90% of prime at a time when Broadway was unaffected by the scheme.

24. When challenged about the accuracy of the 1998 Promis report Mrs Pullan agreed that the figure of £80 per sq ft that it contained in respect of the subletting of 30 Broadway in 1997 to Clinton Cards was wrong. But she disagreed with Mr Hornby's analysis of this transaction at £57.50 per sq ft, and adopted instead a rent of £60.21 per sq ft, which reflected what she described as a normal 3 months rent-free period. Mrs Pullan also stated that the sublease contained an absolute covenant against the sale of any type of clothing except for hosiery and footwear. In her opinion this excluded approximately 30% of the potential market and meant that the rent passing was discounted by 20% from the open market value. Allowing for this discount gave a true figure of £72.25 per sq ft. She felt that the figure of £80 per sq ft was not dependent upon this transaction but was also supported by transactions in Market Street to which she had referred in her report and by Mr Hornby's acceptance that 43 Broadway would have re-let at £83 per sq ft.

25. Mrs Pullan denied the suggestion that any alternative redevelopment proposal would have required compulsory purchase powers. She argued that a developer would have proceeded to redevelop Central House on its own and without the need for such powers. There were very few long-term interests in that building and she considered that a developer would negotiate their purchase. Developers were used to assembling such sites through negotiation and everybody had their price. She thought it unlikely that the developer would have been held to ransom.

26. In his report into the CPO for the scheme the inspector said that North Block was visually unattractive. Mrs Pullan felt that this was irrelevant to retailers who were concerned only about the location and footplate of their premises and the footfall that they attracted. The inspector had also said that the unit size of the shops in North Block was poor. Mrs Pullan thought that the units in Charles Street were regularly shaped but small at about 800 sq ft. A couple of the units were not ideal. She thought that the Broadway units were reasonable but said that the main multiples were not looking for units of this size. Fashion retailers would want larger units. However North Block was flexible in terms of its ability to be reconfigured and there were plenty of other retailers who would be interested in the retail opportunity that the block offered. She acknowledged that car parking at North Block was not as good as it was at Kirkgate. Mrs Pullan did not accept that busy roads isolated North Block. Market Street only presented a minor impediment to pedestrian movement and was not part of the ring road. Traffic calming measures had improved the pedestrian environment.

27. Mrs Pullan rejected Mr Hornby's evidence that the closure of the Rackham's store had contributed to the decline of the city centre. She said that House of Fraser had closed the store as part of a wider programme of such closures. Its loss was much regretted but it had been successfully redeveloped as six unit shops that had been occupied by several high profile retailers. The redevelopment had been viable despite the difficulties with the trading space that had an excessive volume of upper floor accommodation. The DTZ Pieda report found that the redevelopment of the Rackham's store and the adjoining Wool Exchange had "significantly boosted retailer and investor confidence in the city centre" and had significantly improved pedestrian links and flows between Broadway and Kirkgate.

28. Mrs Pullan noted that Mr Hornby had used the sale of this property in August 2005 as his key investment comparable. He had analysed this sale at an initial yield of 6.32% and an equivalent yield of 6.6%, which Mrs Pullan argued showed that the rents were reversionary (rising from £100 per sq ft to £110 per sq ft ITZA). She considered that this conflicted with Mr Hornby's argument that rents had stagnated. Mrs Pullan said that the yield on this comparable was anomalous because, in addition to the generally negative perception of investors to accommodation that would have to compete with the scheme, the property was a difficult conversion of a former department store offering substandard retail accommodation with three secondary frontages. At the valuation date the majority of the tenants were either marketing their leases or approaching lease expiry.

29. The loss of C&A was not considered to be key. It was an important store but one which had declined in popularity. Closure of the unit was part of a national programme and it had been speedily reoccupied albeit on a temporary basis because of the scheme. Mothercare had to relocate because of the scheme although Mrs Pullan acknowledged that the company had a programme of relocation to retail parks and was quite likely to have vacated in the no scheme world. She felt that the Mothercare unit would have re-let within the eighteen months assumed by Mr Hornby since it was one of the very few large footplates available in the city centre and would have attracted a great deal of interest. Upon reflection Mrs Pullan assumed a void period of twelve months.

30. The argument of the acquiring authority that the development of the Forster Square Retail Park formed a new retail destination that had pulled the retail focus northwards was said by Mrs Pullan to be untrue. This development was on the edge, but remained part, of Bradford's retail centre. As such it had improved Bradford's overall retail offer and had generated extra footfall. It was not comparable with a shopping centre and any effect it had was not limited to Broadway but applied to the centre as a whole. Mrs Pullan noted that it was also easier to walk from it to Broadway than it was to Kirkgate, which was on higher ground. Nor did Mrs Pullan believe that the refurbishment of Kirkgate in 2001 had materially affected Broadway. At a cost of £5.5m she considered the works to have been relatively small and low key. The centre still had limited accommodation and could not cater for all retail demand, as evidenced by the need for the scheme.

31. Mrs Pullan also rejected Mr Hornby's implication that the White Rose Shopping Centre had adversely affected the Broadway area more than the Kirkgate Centre. There was no reliable evidence to show that this was the case. Mr Hornby had relied upon the DTZ Pieda report that estimated that White Rose had drawn approximately 20% of its 1997 turnover from within the Bradford district. Mrs Pullan dismissed this estimate since it was based upon a small telephone survey of only 0.44% of households and which she considered to be of questionable accuracy. She also thought that White Rose was remote from the subject site involving either three separate bus journeys or a drive of over twenty minutes. She noted that car ownership in Bradford was worse than the national average (67.5% compared with 73.2%). Mrs Pullan concluded that the impact of White Rose upon North Block was insignificant.

32. Mrs Pullan denied Mr Hornby's statement that there had frequently been vacant units on Broadway. The evidence taken from the Goad plans showed a normal cycle of change and did not support the argument that there was a chronic problem of vacancies such as there was in Petergate and Hall Ings.

33. Mr Morton gave evidence of fact about the claimant's involvement with North Block. He explained that it was acquired as a strategic purchase. It enjoyed an unrivalled position between Kirkgate and any new development to the east and was located within the Central Retail Area as defined in the Unitary Development Plan. It had potential for the residential conversion of the upper floors and for the reorganisation of the retail offer at ground and first floor level. The claimant proposed to hold North Block in the short term as an investment and it expected to benefit from normal rental growth, which Mr Morton considered would track that of the prime retail pitch at a level of 80%.

34. The scheme underlying the acquisition was over ambitious in Mr Morton's opinion. There was no established need for the proposed scale of the comparison element. The proposal was for the biggest retail development in West Yorkshire. He felt that a smaller redevelopment would have been more realistic and would have moved the prime rental pitch to the benefit of North Block. Central House had been capable of independent development by 21,685 sq m (230,500 sq ft) of new retail floor space including a 9,290 sq m (100,000 sq ft) department store. A residential development could have taken place on the upper floors. 13 developers had bid for the site and considered it a fine development opportunity, although he acknowledged that Land and City Properties Ltd had not considered it to be a viable proposition and FSDP, the successful purchaser, had soon moved on to a larger scheme

involving additional properties. Mr Morton also conceded that he had no detailed evidence of the viability of the Central House redevelopment although he noted that Asda St James considered the proposition sufficiently viable to be able to bid £6.5m for the opportunity. He confirmed that the claimant had not bid for the Central House site, although it had subsequently produced a sketch scheme of a possible redevelopment.

35. Mr Morton produced a schedule of the leases of Central House. He explained that when it was marketed it was multi-let with a rental income of approximately £1m. The majority of the leases expired in 2005. The major leasehold interests were owned by Bhs, C&A and the council, all of whom Mr Morton considered were amenable to redevelopment. The other long leaseholders were occupiers of three small units accounting between them for only 3.5% of rental income. Mr Morton considered that it would have been possible to negotiate the acquisition of these interests.

36. The redevelopment proposals for Central House produced by Asda St James were cited by Mr Morton as a good example of a scheme that did not require compulsory purchase powers and which excluded North Block. He produced a copy of a plan showing that company's proposals from which he concluded that only road closure orders (for Petergate and Hall Ings) would have been required. He said that the council were enamoured of the scheme and referred to a note on the planning aspects of the proposals prepared by Mr Preece following a presentation to the council by Asda St James on 14 January 1998. The main entrance to the scheme was immediately opposite North Block, which he did not think would have blocked important views of the new development. He believed that Central House could have been developed in isolation with further development being phased in later. Under cross examination Mr Morton said that compulsory purchase powers would only be required as a last resort and he was not persuaded otherwise by the contemporaneous note of the January 1998 presentation that referred to the use of such powers.

37. Mr Westlake said that there had been yield compression in the market in recent years. He supported this statement by reference to the IPD UK Annual Index for the years 1999 to 2005. This showed that yields had come down from 7.0% to 5.5% for National Retail property whilst those for retail property in Yorkshire and Humberside had declined from 7.3% to 5.4%. These yields reflected all types of retail property including those in secondary and tertiary locations. The most marked compression had been in fringe prime and secondary retail locations and Mr Westlake stated that the yield gap between prime and secondary property had become de minimis by the valuation date. He supported his figures by reference to the Promis Report which showed retail yields in Bradford in August 2005 at 5.5%. He argued that property investment was now a national market with fewer market imperfections than in the past. Consequently there had been a general yield convergence between different locations.

38. Mr Westlake explained that he had not used the IPD data series for Bradford (showing a yield of 6.1% in 2005) because he considered that it was too small and therefore not representative. It consisted of only 9 properties with a combined capital value of £52m. Likewise he chose not to use the data series for West Yorkshire (68 properties with a combined capital value of £574m) even though it would have produced a lower yield (5.3%) than the one that he had adopted. He had used the Yorkshire and Humberside data series because it comprised 219 properties with a combined capital value of £1.3 billion.

39. There was a consistent yield gap between Bradford and other local centres in the 10 years leading up to when the scheme became public knowledge in 1999. Thereafter the gap had increased by 0.25%, which Mr Westlake considered to be indicative of blight. He deducted this amount from Mr Hornby's adopted yield of 6.1% to give 5.85% and then deducted a further 1% to reflect the fact that North Block was a better than average investment. This gave a yield of 4.85%. As a check he deducted 1% from the National Retail yield of 5.5% in 2005 to give a yield of 4.5%. In the light of this evidence he considered the claimant's adopted yield of 5.5% to be very conservative.

40. Specific comparables were restricted because of the blighting effect of the scheme. Mr Westlake had therefore looked at deals in other centres besides Bradford, both elsewhere in Yorkshire and Humberside and beyond. He referred to the double sale of the Kirkgate Centre, firstly as part of a portfolio sale from Prudential to The Mall for £81.65m in September 2005 and secondly as a single lot to Crownway Investments for £83.6m in January 2006. He dismissed the portfolio sale as being incapable of meaningful analysis and he placed no reliance upon it. He argued that the only concrete evidence from the second deal was in respect of the initial yield and that he approached any analysis of the equivalent yield with a high degree of scepticism. Allowing for purchaser's costs and guaranteed rental top-ups Mr Westlake calculated the initial yield of the sale to Crownway Investments to be 5.38%. Excluding top-ups the initial yield was 5.24%. He considered the Kirkgate Centre to be dated and tired. It was anchored by Primark and was a blended average of primary, secondary and some tertiary units. He thought that the disposal had been adversely affected by the scheme and the increased risk of future voids in the Kirkgate Centre that this had created. He also said that shopping centres traded at a 1% discount to other retail units due to the lot size, the existence of secondary malls and the intensive management that was required. Despite all these problems the centre had still sold at a yield of some 5.4%. The acquiring authority had relied upon an analysis of the second sale that showed an equivalent yield of 6.08%. Mr Westlake argued that this implied a reversionary yield of 6.8% which required a 25% increase in rental values. He considered that this was very unlikely given the threats facing the centre and the low rents achieved on the recent letting of two of its units.

41. Mr Westlake considered three other comparables in Bradford. Firstly, he said that Broadway House, at the junction of Market Street and Bank Street, had been under offer (but not sold) at 6.1% in November 2005, a yield which he considered to be behind the hardening market. He said that this illustrated the yield compression seen in Bradford in recent years since the same property had been sold in 1998 at 12% and again in 2003 at an equivalent yield of 8.2%. He said that Broadway House was considerably inferior to North Block. Secondly, Mr Westlake referred to 26 Darley Street located north of the Marks and Spencer store on the fringe of the prime retail area. This property, which was sublet to Civic Enterprise Limited until 2011, was offered (but not sold) to the market at around the valuation date at a net initial yield of 6%. He considered the property to be in a rapidly declining location and with only a short term income. An offer was received on the asking terms but subsequently withdrawn when the purchasers identified the full impact of the scheme. Thirdly, Mr Westlake cited the sale of 33 Kirkgate, a prime property let to Newcastle Building Society with an unexpired term of five years, which sold in March 2005 at a yield of 5.43%.

42. The other comparables relied upon by Mr Westlake were all located outside Bradford. Six of them were within the Yorkshire and Humberside region, at Doncaster, Barnsley, Wakefield, Leeds, Harrogate and Hull. The remaining four comparables were all outside this region at Blackpool, Newcastle, Leicester and Skegness. He considered the transactions at Doncaster and Barnsley to be particularly relevant. The former was the sale in 2005 of two retail units opposite the entrance to the Frenchgate Centre, which was undergoing extension and refurbishment. It was predicted that following the works to the centre there would be a market decline of other retail property. Nevertheless these units sold at a net initial yield of 4.25% and a reversionary yield of 5%. The comparable in Barnsley was the sale of a former Woolworth store now let as retail and storage space to nine tenants and sold in 2005 for £18m at an initial yield of 4.99% and a reversionary yield of 5.5%. This was despite the impending competitive threat of the redeveloped Metropolitan Shopping Centre, which would provide a new mixed scheme of 390,000 sq ft, anchored by a 100,000 sq ft department store. All of the other comparables had equivalent yields of 5% or less, except for the property in Hull which had a net initial yield of 5.45%.

### **Case for the claimant: submissions**

43. Mr Young began by describing the key facts about the scheme in terms of its size and the date by when it had become widely known. He submitted that this was in 1998 and that by November 1999 the acquiring authority had been talking about exercising compulsory purchase powers in respect of Broadway and Cheapside although it was not until September 2002 that it indicated that it also wanted to acquire North Block. Even then possession was not taken for a further three years. By 2007, nine years after the scheme was introduced, no development had taken place other than demolition of the existing buildings. The developer and the acquiring authority had constantly deferred the estimated opening date for the new development.

44. Mrs Pullan had demonstrated in her evidence how this uncertainty about the scheme had caused blight. In particular she referred to a series of Promis Reports, the Audit Commission report for 2002/2003, two letters from one of the North Block tenants, J D Sports, and several local newspaper reports. In the light of this evidence Mr Young described Mr Hornby's position in denying the existence of blight as simply not credible. Mr Hornby refused to accept that which was obvious and Mr Young considered that his evidence in this regard was tactical rather than fair. For Mr Hornby to accept the existence of blight would undermine the acquiring authority's valuation since the rents it had used would be too low and the yields too high. Furthermore there would also be a compensatable loss of rent. Mr Hornby had argued that the existence of upward only rent reviews prevented any blight from adversely affecting the income receivable. Mr Young dismissed this view as absolute nonsense since the claimant was denied any increase in rents which would otherwise have occurred. There had been extensive and pervasive blight created by the uncertainty about, and extraordinary delay in implementing, the scheme. By the valuation date such blight had even suppressed prime rental values in Darley Street.

45. Turning to the claimant's valuation Mr Young stressed that Mrs Pullan had adopted a conservative approach. She had taken rental figures as a percentage of prime rents which themselves had been affected by blight and had used a figure of 80% of prime even though the

report prepared by Donaldsons in September 1999 justified a higher figure of 90%. She had excluded from her analysis the national trend of retail rent increases and she had ignored the potential of North Block for residential conversion of the upper floors and the reconfiguration of the retail units.

46. Mr Young reviewed Mrs Pullan's valuation evidence and stressed her fairness of approach. This was exemplified in her willingness to revise her analysis of the transaction identified in the 1998 Promis Report in respect of 30 Broadway involving Clinton Cards. As a result of this concession Mr Young stated that although the figure of 80% of prime rents was still pursued on behalf of the claimants (supported by Mr Hornby's use of £83 per sq ft ITZA for 43 Broadway) it was accepted that there was now a greater weight of evidence supporting a figure of 70%. He contrasted Mrs Pullan's reliance upon evidence to establish blight with what he argued was Mr Hornby's subjective conclusion that Broadway was in long-term decline. Mr Young said that Mr Hornby's views were based upon pure conjecture, assertions and a lack of independent evidence.

47. It was clear from the series of four Promis reports that Mrs Pullan relied upon that the scheme had suppressed Broadway rents. The DTZ Pidea Report published in May 1998 (which was the acquiring authority's own report) had been unequivocal about the status of Broadway as a key part of Bradford's central shopping area. The report said that Broadway's pedestrianised areas were attractive, that it was a good secondary pitch and enjoyed low vacancy rates. The redevelopment of the Brown Muff and Co building and the Wool Exchange together with the development of Forster Square Retail Park were seen by the report as positive developments. The White Rose Centre had had no significant impact. A study of the Goad Plans for Broadway showed that there was no chronic problem of vacant units. Such a problem was confined to the fringes of the shopping area in Petergate and Hall Ings, which were located well away from North Block.

48. Mrs Pullan had identified other transactional evidence in a more secondary location to the south of North Block, ie 61 to 67 Market Street and 7 to 9 Broadway. These units, which do not form part of the scheme, had shown significant rent increases from the mid 1990s until the valuation date. Mr Hornby accepted that there had been significant rent increases in prime and secondary locations from the late 1990s onwards and yet expected the Tribunal to accept that the situation in respect of North Block would have been completely different in the no scheme world. Mr Young submitted that such a position was not a credible one.

49. Mr Young criticised Mr Hornby's evidence on a number of grounds. Firstly, he said that Mr Hornby had failed to identify the correct location of North Block and had wrongly implied that it was on the southeast edge of the central shopping area. Nor had he acknowledged that the DTZ Pidea Report had described the pedestrianised areas of Broadway as being a good secondary pitch in one of the two main shopping areas in Bradford. Secondly, he had suggested that there was a vacancy problem in North Block contrary to the findings of the DTZ Pidea Report and a proper interpretation of the Goad plans. Thirdly, Mr Hornby had submitted photographs of North Block that had been taken in September 2005. They gave the misleading impression that the site was rundown and deserted. Fourthly, he had suggested that the development of the Owlcotes Centre, The White Rose Centre and Forster Retail Park together with the closure of Rackhams had all adversely affected rents on Broadway. But there was no

evidence to support this conclusion. Indeed the DTZ Pidea Report saw the closure of Rackhams and the development of the new retail park as having benefited Broadway whilst it concluded that The White Rose Centre was not having a significant effect on Bradford's existing centre. Fifthly, Mr Hornby had not recognised the positive factors favouring North Block as a retail location, including its good access to public transport, its location on the only area of level ground in the city centre, full (and recently refurbished) pedestrianisation of the two principal retail frontages and other adjoining streets and traffic improvements to Market Street in 1997. Finally, Mr Young criticised Mr Hornby's transactional evidence, which he said was virtually useless in circumstances where the scheme became known at precisely the same time as rents began to rise. Mr Young concluded that Mr Hornby had based his assumptions about future rents at North Block upon a misunderstanding of the role and status of Broadway prior to the scheme and upon evidence that was unfair and unreasonable.

50. Mr Young submitted that reliance upon alternative development in the absence of the scheme had never been a significant part of the claimant's case. The idea of an alternative scheme reinforced the claimant's position on rent increases; it was not the basis for them. Mrs Pullan's valuation was based upon incremental increases in rental income that simply tracked prime rents. She had rejected the suggestion that an alternative scheme was crucial to her valuation, although she accepted that it would make a difference. The claimant's case was that, in the no scheme world, an alternative scheme not requiring compulsory purchase powers would have come forward between 1998 and the valuation date. It was not credible to hold that no such alternative would have come forward at a time (late 1990s to 2005) of a national property boom in the core shopping area of England's sixth largest city in circumstances where a developer had already acquired the long leasehold interest of the neighbouring Central House.

51. With regard to yields Mr Young submitted that Mr Hornby had accepted that there had been significant yield compression leading up to the valuation date and that the investment market was now a national one that had seen a narrowing of yield differentials between centres. Mr Hornby's reliance upon the IPD data series for Bradford was wrong because it was a small, and therefore unrepresentative, sample. It was likely to include secondary and tertiary properties and certainly excluded the largest deal, namely the sale of the Kirkgate Centre. The data was also unreliable because of the blighting effect of the scheme. This had led to an increase in the yield gap between Bradford and Leeds. Mr Young queried why Mr Hornby had increased the yield of 6.1% derived from the Bradford data series to 6.25% which was his adopted yield for the valuation of North Block, when the former included all types of retail property and the latter was for a property in a good secondary location. Mr Westlake had rightly preferred to use the larger data sample found in IPD's statistic for the Yorkshire and Humberside region. This included all types of retail and both major and minor town centres. It showed a yield of 5.4% and Mr Young submitted that the adoption of a yield of 5.5% to value North Block was therefore conservative.

52. Mr Young suggested that the four specific Bradford comparables used in Mr Hornby's evidence actually supported the claimant's choice of yield. 33 Kirkgate achieved a yield of 5.43% when sold in March 2005. Broadway House had been sold at a yield of 7.71% in March 2004; some 18 months before the valuation date and at a time of yield compression. The property was under offer in November 2005 at 6.1%, which showed the extent of that



compression. Broadway House was in a worse location than North Block and lay outside the primary shopping area. 32 to 34 Bank Street was sold in April 2004 at a yield of 6.75% at a time when the IPD Bradford data showed a yield of 6.8%. Allowing for yield compression of 1.8% within Bradford between the date of sale and the valuation date indicated a yield of just under 5%. The sale of the former Rackhams building in August 2005 was said by Mr Hornby to be at an equivalent yield of 6.6%. Mr Westlake had calculated that this yield implied rents of £110 per sq ft which was at substantial variance with Mr Hornby's other rental evidence. Mr Hornby had not clarified this point despite a request for him to do so.

53. The sale of the Kirkgate Centre showed an initial yield of some 5.4% despite the blight caused by the scheme. In the no scheme world the yield achieved would have been 5% or less. Mr Hornby's analysis of the deal to show an equivalent yield of 6.08% was unreasonable, requiring as it did an assumption of an immediate uplift of 25% over current rents. Mr Young said that this was very unlikely.

54. The claims for loss of rental income due to blight and in respect of empty rates were supported by Mrs Pullan's evidence and had been based upon reasonable assumptions. An indicative claim for pre-reference costs was made in the sum of £15,725 at the hearing, a figure that was subsequently revised to £16,526.25 in the light of the timesheets submitted by Mrs Pullan and Mr Westlake.

55. Mr Young concluded that the denial of blight by the acquiring authority was extraordinary in the light of the evidence. Mr Hornby's assumptions about future rents were based upon an unfair and unreasonable view of Broadway that had been derived from a very selective misreading of the available evidence. His choice of yield depended upon a very limited and unreliable data sample that had been compromised by the existence of the scheme. On the other hand Mrs Pullan's valuation was broadly accurate and realistic. She had made sensible concessions where necessary and her evidence was robust, well researched and based upon a significant number and amount of contemporaneous transactions and data. She had accurately described a consistent picture of Broadway and North Block; one that revealed increased rents and compressed yields in the absence of the serious blight caused by the scheme.

### **Case for the council: Evidence**

56. Mr Preece had responsibility, from 1997, for the policy and implementation of Bradford's city centre regeneration programmes within the Development Plan, and he had appeared as the council's principal planning witness at the CPO inquiry into the scheme. He set out the relevant history of city centre shopping in Bradford, together with the background to, and the strategic development of, the scheme. Most of this evidence was uncontentious and is summarised above, under 'facts'. He said that, following the construction of the Kirkgate Centre in 1973, the Broadway area gradually became less popular as one of the two main shopping destinations due principally to poor car parking, difficult pedestrian links caused by heavy use of surrounding roads and, particularly, the increasingly poor condition and dated appearance of the buildings. As time went on, an increasing number of the most peripheral units (in Petergate and Cheapside) became vacant and, according to a report in 2001 by Dunlop

Heywood, Consultant Surveyors, many were poorly configured and virtually unlettable. However, whilst Mr Preece accepted that North Block itself had not had a serious vacancy problem, he said that there had been a slow, long-term decline in demand for retail in this location and potential occupiers were more likely to be A3 user, food outlets – an example being Pizza Hut’s occupation of 45 Broadway and 13-15 Cheapside in 1999.

57. In its attempts to rejuvenate the area, the council had undertaken a number of minor improvement works to the roads and pedestrian areas, although within the then existing constraints, it was not possible to remove buses entirely from the principal city centre shopping area. He accepted, in cross-examination, that it was possible for pedestrians to get between Kirkgate and the Broadway without having to cross the main ring road or Cheapside. He said the council recognised that, if it was to compete with out-of-town shopping destinations such as Owlcotes at New Pudsey and the White Rose Centre just outside Leeds, major redevelopment was required that would need extensive reconfiguration of the road network (involving road closure orders), and CPO powers to ensure all the requisite land, which was in a significant number of individual ownerships, could be acquired. Mr Preece said that, in his view, there was nothing that could have been done to revive the Broadway area without comprehensive redevelopment. Although in 1997 the council did initially consider a number of smaller redevelopment projects, none of them progressed due to lack of viability and the problems caused by the number of highways that cut across the site. Individual refurbishments of existing blocks, including Central House, were not considered viable on their own.

58. Mr Preece acknowledged that, as the council’s plans for the city centre regeneration began to take shape, the initial development agreement with FSDP had excluded North Block. However, he said it soon became apparent that in order to achieve sufficient critical mass to attract investors, operators and the shopping public, a much wider redevelopment strategy was required, and in the proposals that were included in the planning permission obtained in November 1999, and in the revised development agreement completed in January 2001, North Block was included. In his opinion, which had been endorsed by the inspector at the inquiry, and accepted by the Secretary of State, the inclusion of North Block was essential to enable the creation of large, prominent entrance units which would strengthen pedestrian flow along New Broadway and Forster Street (the main proposed mall). The claimant’s objections to the inclusion of North Block at the inquiry were, Mr Preece said, roundly rejected by the inspector who had said, at para 5.4 of his report:

“If the proposals were reconfigured to exclude Plot 8 [North Block] the scheme would be smaller. It would have fewer large units, its main entrance would be recessed and less visible. Moreover, it would be alongside a block of singular ugliness whose retail content would be of uncertain quality and whose servicing would interfere with the free flow of pedestrians.”

The First Secretary of State agreed, and said at para 11 of his decision letter:

“that, for the reasons the Inspector gives, the reduction in the size and mass of the proposed development, which would result from the exclusion of Plot 8, would have an adverse impact on the viability of the project and would threaten its success.”

59. Mr Preece said that the Inspector had also been concerned about the impact of the retention of Plot 8 on the existing listed bank, and he had said at para 16.36 of his report:

“A second important impact would be the setting of the listed bank. It is accepted that the existing Plot 8 buildings would benefit from refurbishment and an improved external appearance. In my opinion, the detrimental impact of the existing building [on the listed bank] is such that it could not be overcome by cosmetic external refurbishment. The whole scale and massing needs to be altered... The retention of the units on Plot 8 would not provide a gradual introduction to the larger scale of the scheme but would remain as an alien element in the setting of the listed building and mask the new shopping centre from pedestrians. I find the reasons for including Plot 8 in the CPO compelling.”

60. In conclusion, Mr Preece said that a smaller, alternative scheme that excluded North Block would not have achieved the necessary benefits in terms of retail quality, townscape and public realm improvements. It would still have required extensive road closures and probably a CPO. There would have been very little prospect, he said, of the council supporting such a scheme with its CPO powers. As to the general decline in the Broadway area, he pointed out that both Forster House and Central House had gone into receivership and this was indicative of the general malaise. The council was looking for a step-change to revitalise this part of the city centre, and whilst it had been prepared to consider alternative proposals prior to the CPO scheme being formulated in detail, it was evident that none of those which came forward, as Mr Maclure had pointed out, ever came to fruition. The Asda St James scheme, for instance, upon which the claimant was setting such store, was little more than a fleeting proposal, which did nothing to resolve the inherent traffic problems, and, as it transpired, they were not the successful bidder for Central House. However, he did accept that the proposal would have complied with the UDP.

61. Mr Maclure is a development executive with Westfield Shoppingtowns Ltd, part of Westfield Acquisition Plc, which took over Stannifer Broadway Ltd (“SBL”) (formerly FSDP), the company that had assembled the scheme site, in November 2004. He has had day-to-day responsibility for the management of the proposed Broadway development project since January 2005. His report explained the scheme’s evolution and considered what potential there may have been for alternative comprehensive schemes, particularly a smaller one that excluded North Block. The purchase of Central House and the first development agreement entered into with the council in June 1998, he said, gave them an opportunity to formulate a comprehensive regeneration scheme that would meet the council’s needs. Whilst they had considered a refurbishment of Central House alone, as a fall back in case the wider development could not proceed, the building configuration was such that it was incapable of upgrading to modern standards that would be suitable for national retail outlets, especially as many of the then existing units faced outwards towards Petergate, Cheapside and Hall Ings. With the council’s willingness to consider significant road closures and the use of CPO powers, it became possible to move towards assembling a much larger site, for which the 1999 planning permission was obtained. Contact was made with the previous owners of North Block in August 1998 although early negotiations failed to come to fruition, and the building was subsequently acquired by the claimant. Once the CPO had been confirmed, SBL managed to acquire Midland House and Forster House in 2003, together with North Block in

2005 following the General Vesting Declaration, and the total land purchase was completed in that year.

62. Mr Maclure said that in his view, as a developer, there would have been no attraction in undertaking either piecemeal or wholesale refurbishments of the properties in the Broadway, North Block suffering the same disadvantages as Central House in terms of adaptability. Even if individual buildings had been capable of meeting the requirements of the modern retailer, the wider structural impediments associated with traffic and lack of adequate parking in the area required a much more comprehensive solution. As to individual new developments, he said the only building large enough to warrant consideration of major redevelopment was Central House, but even if possession of the whole could have been obtained by agreement with the lessees (and this was doubtful because the leases under which the two largest tenants occupied, Bhs and C&A had very long reversions) it was not obvious what different form of development could have added sufficient extra value to justify such a redevelopment. Without a comprehensive approach to the area's wider redevelopment it was, he said, difficult to envisage how a stronger mix of retailers could have been attracted, which would have improved the position of North Block as a trading location.

63. The concept of a larger redevelopment (encompassing the whole of the area now acquired and cleared) but excluding North Block was, Mr Maclure said, a non-starter. The northern part of the Broadway was at the key eastern entrance to the redevelopment area and would be the main access point from the Kirkgate/Darley Street prime area. The retention of North Block would mean that the development would be "hidden" behind it, the development could become marginalised and the likelihood of attracting a key anchor store would be jeopardised. Such a proposal would not have met Westfield's objectives from a financial and operational perspective (it being confirmed that they are now the sole developer, the council no longer being a partner in the scheme). There was, he said, no way that a development of the magnitude that is about to be commenced, even without North block, could have been contemplated without the use of CPO powers. In his experience, the prospects of being able to obtain the requisite road closure orders without CPO powers would have been remote, especially as some of the roads to be closed or re-aligned were major arterial routes. In his view, there would have been no meaningful development in the absence of the scheme, and certainly nothing that would be likely to improve rental values on Broadway or in North Block.

64. Mr Hornby said that his firm had been advising the council, Westfield Shoppingtowns and SBL on compensation issues in connection with the scheme since January 2001. He produced a schedule of rents on retail properties in the Broadway area that illustrated a very low level of growth between the late 1980s and 2005. However, he said that whilst it was common ground that due to the national economic climate generally there had been stagnation in all locations up until the mid to late 1990s, rental growth in the prime areas of Kirkgate and Darley Street became evident in the late 1990s, due in part to the refurbishment of the Kirkgate Centre, the redevelopment of the Talbot hotel and a shortage of prime retail sites in that area. It was ~~also~~ agreed that such growth was not reflected in Broadway/Charles Street (Broadway being acknowledged as the more valuable pitch of the two), but in his view, the reasons were other than blight caused by the scheme. The continuing stagnation was partly due to the closure of the Rackhams Department Store, a key city centre retailer located at a busy pedestrianised intersection between Bank Street and Market Street, which retailers in the

Broadway area traditionally benefited from. That building was subsequently converted into 6 shops that had been let to major retailers including HMV and Boots, but that did not compensate for the loss of what had been the only major department store in that part of the city. Also, following the completion of the first phase of the new Forster Square Retail Park to the north east of the city centre (about 5 minutes walk from Broadway) in 1996 (118,000 sq ft) and the second phase in 1998 (140,000 sq ft), the focus of city centre retailing was pulled northwards away from Broadway and closer to the streets around the Kirkgate Centre. Indeed, he said, this new retail destination had attracted some retailers away from their former locations in Petergate and Broadway (Argos and Dixons/Currys), and Mothercare had also moved there from North Block.

65. There had also been an increase in out-of-town competition from the new Owlcotes development at New Pudsey and the White Rose Centre near Leeds, both of which would have had a more significant impact upon secondary trading locations such as Broadway, than they would have upon the prime retail areas. The C&A store in Central House, opposite the Broadway frontage units in North Block closed in 2001 and, Mr Hornby said, the long term decline of Broadway as a trading area was particularly exacerbated by its dated and run down 1960s appearance, and the fact that the shops were not suited in terms of size and configuration to modern day retailers' requirements. Despite the efforts that had been made by the council to improve the area (new street lighting, kiosks etc) this had not arrested the decline and, in fact, the emergence of the scheme itself was an attempt to reverse that decline in that part of the city. Whilst he acknowledged that vacancy levels in Broadway and North Block itself had not been significant, he said that those units in North Block that had been vacated and the premises at 13/15 Cheapside taken by Pizza Hut, had each been vacant for over a year before they had been re-occupied, and the increase in vacant and unlettable units around the outer periphery, including 1-37 Petergate (described as the banana building), had added to the overall perception of decline.

66. Mr Hornby said that Broadway was a relatively small pedestrian area in comparison with Darley Street, Kirkgate, Bank Street and Hustlergate and was separated from them by Market Street which, whilst having been restricted to through traffic, was still a main route for buses, and acted as a deterrent to pedestrians coming down from the main prime areas. He said that the fact that both Forster House and Central House had gone into receivership in the mid 1990s may have been related to the general malaise in the area but would not have been in any way due to the scheme as that did not come along until afterwards. Whilst there was clear evidence that rental values had remained stagnant (and had possibly even fallen, but that could not be established due to the 'upward only rent review' provisions in commercial leases that prevented reductions), the fact that vacancy levels remained low in Broadway/Charles Street indicated, Mr Hornby said, that the alleged blight caused by the scheme did not, in fact, exist. In his view, therefore, rental levels at the valuation date were no higher than those that were actually passing.

67. As to comparisons in rental levels between the agreed prime retail areas of Kirkgate and Darley Street, and Broadway, Mr Hornby said that until the early 1990s Broadway had been between 80% and 90% of prime, but for the reasons he had given, the area changed fundamentally and he did not accept Mrs Pullan's assertion that had it not been for the scheme, the area would have remained at 80% of prime at the valuation date. He pointed out that the

analysis in the Promis report for 1998 showing a rental value in Broadway based upon the Clinton Cards transaction (30 Broadway) at £80 per sq ft ITZA, against established levels of £90 - £100 per sq ft ITZA in Darley Street/Kirkgate was incorrect. A proper analysis of that transaction (the details of which were agreed with Mrs Pullan) gave a figure of £57.50 per sq ft or, if an allowance was made for the “traditional” 3-month rent-free period as had been done by Mrs Pullan, this became £60.21. In his rebuttal report, he acknowledged that £57.50 per sq ft as a percentage of the prime rent of £90 per sq ft (the lower level of the range) equated to 64%. He accepted the fact that the Clinton Cards unit had a restriction as to user (preventing the sale of clothing) but could not say what affect that might have had on the settled rent, as this was not a location particularly favoured, or generally occupied by, clothing retailers. Mr Hornby acknowledged that, in the section of his report that dealt with rental voids, he had assumed in his calculation that 39 and 43 Broadway would have eventually re-let at the former passing rent – which equated to £83 per sq ft ITZA – but said he had only used that for the purposes of assessing lost rent. He considered that there had historically been serious over-renting because the only hard transactional evidence was the Clinton Cards deal at £57.50 per sq ft.

68. Mr Hornby said that his opinion that the reduction in rental values in Broadway, as a percentage of prime, was not the result of blight caused by the scheme was supported by the reductions in the rating assessments between the 1995 and 2000 lists, to which Mrs Pullan had referred. It was evident, he said, that the Valuation Officer had accepted by the valuation date for the 2000 list (1 April 1998) that rental values had fallen substantially from those which had been adopted at the valuation date for the 1995 list (1 April 1993). The reduction from £700 per sq m to £550 per sq m (over 20%) had been assessed some 4 years prior to the confirmation of the scheme and before the first planning application had even been made. Thus, he said, it was clear that rental values in Broadway had fallen from their earlier levels by factors that were not associated with the scheme. There were certainly no physical factors relating to the scheme that existed at 1 April 1998. With rating assessments for the prime pitches in Darley Street being agreed for the 2000 list at between £1,050 per sq m and £900 per sq m, the ratio to Broadway was between 52.4% and 61.1%, which was consistent with the ‘corrected’ Promis data for the Clinton Cards transaction. Furthermore, he said, it should be noted that of the rateable value reductions shown in the table at para 4.11 of Mrs Pullan’s report, only 4 of the 13 relate to properties within the CPO area, which suggested to him that there were clearly causative reasons other than blight.

69. As to Mrs Pullan’s suggestion that there had been rent increases in the period 2000 to 2005 in south Broadway and Market Street, he said that the South Broadway unit was a betting shop where A2 use was permitted, and the increase in Market Street would have been due to a specific localised event, namely being right opposite the Rackhams store and thus benefiting from its redevelopment. In fact, as the table he had produced showed, there was no other evidence of rental growth in south Broadway (which was in any event outside the perimeter of the proposed scheme) as all the rent reviews in 1998 and 2003 in units 16a to 20 Broadway were at nil increase.

70. Commenting upon Mrs Pullan’s suggestion that the JD Sports letter of 11 December 2002 concerning the rent review negotiations on 23 Market Street proved that blight caused the lack of rental growth, Mr Hornby said he did not agree with her interpretation of it. The writer

had said “I do not believe there is any evidence to suggest an increase...” (in rent) and that “this is clearly compounded by the fact that the subject premises are the subject of a CPO, having the effect of blighting the property”. Thus, it appeared that the writer was saying there were other reasons why the rent should not rise and that these were simply “compounded” by the scheme. On the quote from the Promis report of 2005 cited by Mrs Pullan saying that there had been “little recent rental activity across Bradford city centre as a whole” and that “local commentators attribute this to the long awaited development” for which site clearance had begun in March 2004, Mr Hornby pointed out that the report also said that “Bradford has broadly the expected level of demand for a city of its size and status”, and accordingly it was difficult to draw any firm conclusions from the report. It should be noted, he said, that were it not for the incorrect analysis in the 1998 Promis report, the evidence over the reporting period 1998-2005 showed that the relationship of Broadway’s rental values with prime levels remained generally static, and did not demonstrate any clear decline between Broadway and prime pitches over the period since the scheme had been initiated.

71. In assessing the rental value of North Block at September 2005 at £629,350 Mr Hornby explained that this was made up of the £527,500 passing at that date, and the estimated rental value of the two shops whose leases had expired and the tenants had vacated (£46,850 for 39 Broadway and £55,000 pa for 43 Broadway). Those estimates were equivalent to the rent that had been passing on those units in June 1999 when the FSDP planning application was made. The fact that there would be a void period before the units were re-let and became income producing again was dealt with under the head of ‘loss of rent’ in the disturbance claim. He made no assumptions in his valuation, as Mrs Pullan had done in hers, as to future rental growth. Mr Hornby used an equivalent yield of 6.25% to give a gross valuation of £9,202,879. He then deducted head rent at 7% (£44,054), which he again capitalised at 6.25% to give £704,872 which produced a valuation of £8,498,007 – say £8,500,000. In cross-examination he accepted that the correct deduction for head rent should also have allowed for 3.5% permitted capital costs and the resulting figure would have been £42,512. However the revised valuation of £8,522,687 did not, he said, alter his overall, rounded, opinion of value.

72. In adopting an equivalent yield of 6.25% to be applied, Mr Hornby said he considered the IPD Local Markets Report for Bradford for 2006 which showed that for the 2005 year end the equivalent yield was 6.1%, derived from data from 9 transactions. He considered IPD to be more reliable than the Promis reports which are largely based upon agents’ opinions and perceptions, rather than firm statistical data. This evidence, and a further 4 comparables that he had analysed from his own research, was far more appropriate, he said, than Mr Westlake’s reliance upon the Yorkshire/South Humberside data which, whilst it was accepted was based upon a much wider sample (219 transactions), covered a significantly wider area. It would have included evidence from Leeds and Sheffield, which historically had lower yields, and it would also have included large numbers of even more incomparable locations such as Skegness and Hull. Indeed, he said, the IPD datasets for a 25-year period showed Bradford yields averaging 1.58% more than Leeds, and 1.1% more than Yorkshire/Humberside. On the basis of Mr Westlake’s use of an equivalent yield taken from Yorkshire/Humberside at 5.4%, a true equivalent yield for Bradford city would be 6.5%, but Mr Hornby said he had instead adopted 6.25%. He said the 9 transactions on the IPD Bradford market report had a total capital value of £52m, thus averaging £5.5m each which showed they were not insubstantial. The report did not include the sale and sale-on of the Kirkgate Centre, but little reliance could be placed upon those transactions, despite the analysis that had been provided by the claimants,

as the initial sale by Prudential included Kirkgate as part of a job-lot of 4 shopping centres and the figures provided were, therefore, an apportionment of the price achieved for the whole portfolio. It was also vastly different to North Block, as it was a covered centre in a prime position and had a significantly higher overall value. The reported initial yield of about 5.45% equated, by his reckoning, to an equivalent yield of about 6.08%.

73. As to his own comparables, Mr Hornby said that the sale of Units 1 – 6, 26 Market Street (the former Rackhams building) was the most appropriate in that it was sold at about the same time (August 2005) and at a price similar to his valuation of North Block. It was let to good or fair quality covenants, including Boots, Virgin, HMV and Kelly Services, although he acknowledged that three of the 6 units were being marketed by the occupiers at the time of the sale. The building was located in a slightly better position than North Block, being closer to the prime area, and the price represented an equivalent yield of 6.6%. 33 Kirkgate, which was a single retail investment unit in a prime position close to the Kirkgate Centre was let to Newcastle Building Society, and was sold for £710,000 in March 2005 at a net initial yield of 5.43%. Mr Hornby said that there tended to be more competition for small lot sizes of under £1m where private investors were also likely to be in the market.

74. Acknowledging that some yield compression had occurred in the years immediately prior to the valuation date, he also referred to Broadway House in Bank Street, which had sold in March 2004 for a net initial yield of 7.71%, but was remarketed and went under offer in November 2005 at a yield reflecting 6.1%. 32/34 Bank Street, two units totalling over 25,000 sq ft in a prime location and let to Superdrug and Orange, were sold in April 2004 at a yield reflecting 6.75%.

75. Taking all this information into account, together with the difficulties that he thought would be encountered in re-letting the Mothercare unit when they vacated (and the landlords had been aware of their intention to relocate since 1999) due to their units' size and configuration, he was confident that a yield no better than 6.25% would be achieved for North Block. He stressed that in his opinion the use of local rather than regional data was far more likely to reflect the true value, and any evidence from outside Bradford city centre was not relevant.

76. As to the disturbance elements of the claim, Mr Hornby said that he calculated the loss of rent for the two vacated units at 39 and 43 Broadway at £82,907 made up as to 11 months lost rent on 39 at £41,657 and 9 months on 43 at £41,250. On the basis of those void periods, he calculated the empty rates payable at £5,030 for 39 and £6,228 for 43 which, when £788 was deducted for savings in head rent amounted to £10,470.

### **Case for the council: Submissions**

77. Mr Humphries said firstly that it had initially been a cornerstone of the claimant's case that, in the absence of this particular scheme, an alternative retail led scheme would have come forward that did not require the claimant's property, but which would have led to an increase in rental values (and thus the reversionary value) in North Block due to it being located right at



what would be the main entrance. It was only on day 1 of the hearing that counsel for the claimant accepted the legal concept provided by section 6 and Schedule 1 to the 1961 Act (as had been pointed out in the council's opening skeleton argument), in that it could only rely upon the effects of such an alternative development scheme if it were likely to have come forward without the need for CPO powers. In the acquiring authority's view, there was no prospect of such a scheme coming forward without compulsory purchase powers and thus any enhancement to rental values that Mrs Pullan had relied upon in her report on the basis of such anticipated development should be discounted. Mr Young had said, in his closing submissions, that the issue of alternative development "was never a significant part of the claimant's case", and that "the claimant only relies upon the idea of an alternative scheme to reinforce their position on rent increases. It is not the basis for those increases". In Mr Humphries' submission, it was clear from the claimant's statement of case and from Mrs Pullan's and Mr Morton's evidence that considerable emphasis had been placed upon this issue as part of its opinion of value. If the Tribunal were to find that an alternative scheme would not have come forward, Mrs Pullan's valuation must be affected. If it would have come forward, but would have needed CPO powers, then much of the Tribunal's time had been wasted on an issue that was of no valuation consequence and that, he said, had potential implications on costs.

78. The claimant's case that an alternative comprehensive retail led scheme, such as the Asda St James proposal, would have come forward without the benefit of CPO powers was, Mr Humphries said, wholly untenable. Apart from the fact that, as was made clear in a letter from DTZ Debenham Thorpe dated 24 November 1997 (which Mr Humphries admitted had not been produced), Asda St James, if they were successful purchasers, intended to hold the properties as an investment, with a view to considering redevelopment in "five to ten years time". There were a large number of leasehold interests that would have to be bought out, many of them protected under the provisions of Part II of the Landlord and Tenant Act 1954, and indeed one of the larger occupiers (Bhs) had been an objector at the CPO inquiry, so it was unlikely they would have been willing to negotiate. What's more, Asda St James themselves had recognised that CPO procedures would be required if their proposals were to proceed, and as Mr Preece had explained, there would also need to be a large number of road closures and re-routing that would need the requisite Orders. A piecemeal redevelopment of Central House was also a non-starter, as Mr Maclure had said, as would have been the likelihood of a major refurbishment of that building. Mr Humphries said that the claimants had totally failed to produce any evidence that there was a reasonable prospect of a non-CPO related major redevelopment in the area that could possibly have acted to enhance rental values in North Block by the valuation date.

79. It was further submitted that there was no convincing evidence the agreed stagnation in rents in the Broadway area was in any way the result of blight caused by the scheme. Mr Humphries said that it was for the claimant to prove, under the provisions of section 9 to the 1961 Act, that any loss of value in the claimant's interest in the land must be attributable to the fact that an indication had been given that the land was likely to be acquired. The claimant had failed to prove that there was blight and that it had caused the lack of rental growth in Broadway. Although it was not for the council to prove that there was no blight, it was its case that in the absence of such a scheme, there would have been no rental growth between the late 1990s and the valuation date in any event. There was no evidence that any of the retail units in North Block had suffered a fall in turnover, that there were any significant voids there, or that the demolition works had caused any nuisance. Furthermore, he said, even if there had been

blight, the reversioner would have been protected due to the existence of upward only rent reviews.

80. The parties had agreed that rental growth in the retail sector had been flat, nationally, from the early to mid 1990s, and that rents started to rise generally in about 1998. Bradford was also affected by additional competition from out-of-town and edge-of-town developments at Owlcotes and the White Rose Centre, and city centre rents were also affected by the new Forster Square retail park to which some of the traditional city centre occupiers moved. As evidenced by the Promis reports, rents in the prime area of the city started to rise in 1998 from £90 -£100 per sq ft ITZA to £140 psf ITZA by 2001, partly due to the refurbishment of the Kirkgate Centre and improved car parking there. However, rents in the Broadway area remained stagnant but, as Mr Hornby had explained, this was due to factors entirely unrelated to the scheme. The Broadway area's tired and dated appearance, lack of general maintenance or modernisation, shop units being either too large or too small for modern retailing formats, and a large number of vacant units on the periphery added to the general air of decline and, when retailer interest did start to pick up, that interest was channelled to the more successful 'heritage' part of the city. The location of Broadway/Charles Street towards the edge of the city centre retail area, and its separation from the prime areas by Market Street that, whilst restricted to general traffic, still carried up to 1,200 buses per day, were further detrimental factors. It was the council's case, Mr Humphries said, that far from being the causation of the stagnation in the Broadway area, the scheme was a response to the decline. It was also important to note that it was not just CPO affected properties that suffered rental stagnation, but others in the area that were not being acquired. The Inspector had made it clear in his report following the CPO inquiry what the problems were, and the 1998 DTZ report, which the claimants had 'picked over' to find support for its case, in fact concluded:

“Without this significant new investment [the proposed new shopping centre] we forecast that the sales performance of many shops and stores in the city centre could stagnate and decline up to 2005. In turn, the cumulative impact of these competing centres on the relative attraction of Bradford to shoppers, retailers and investors alike, could seriously damage the city centre's future vitality and viability”.

81. As to Mrs Pullan's insistence that rental values in Broadway were, and would have remained at 80% of prime, this was based solely upon the incorrect information in the 1998 Promis report relating to the Clinton Cards transaction. Applying this wrong information to all rent reviews on North Block up to 2009 in her valuation had resulted in the total rent roll of £759,300 at the valuation date and a projection to £911,100 by 2009 being seriously overstated. Mr Humphries said that Mr Hornby's evidence in this regard should be preferred as it was based upon correct factual information (subject to the minor adjustment he had made to reflect the 3.5% permitted capital costs), which did not in any event alter his overall conclusion as to value. Similarly, Mr Hornby's evidence on an appropriate yield should be adopted as it was based upon the IPD report for Bradford and his own analyses of actual local transactions. Mr Westlake's, and thus Mrs Pullen's reliance upon the Leeds and Yorkshire and Humberside versions of the IPD database was misguided, Mr Humphries said, as there is, and has been for a period of over 25 years, a marked and consistent difference between those areas, and Bradford itself. Mr Hornby's rate of 6.25%, being slightly higher than the IPD's 6.1% for 2005 reflected his own comparables and the risks associated with the rental stream at North Block.

82. Applying that rate to the rental income that Mr Hornby had calculated at the valuation date of £629,350 gave a capital value of £8,500,000. To this should be added the lost rent of £82,907 and the empty rates allowance of £10,470 making a total of £8,593,377. Pre-reference costs would need to be added to this sum, and following the close of the hearing the timesheets showing the breakdown of Mr Pullan's and Mr Westlake's charges were provided to the council. It was subsequently submitted that whilst there was no dispute that the claimant was entitled its reasonable costs of preparing the claim, there was a question over whether 17 hours of time claimed by Mrs Pullan for the provision of monthly updates over a 3 year period, and 9 hours by Mr Westlake for research were valid.

## **Conclusions**

### **Valuation under rule (2)**

#### **(i) A smaller, alternative scheme**

83. We note that it was accepted by the claimant, on day 1 of the hearing, that the only prospective alternative redevelopment that we are being asked to take into account in the rule (2) valuation for compensation, is one that would have come forward without the need for CPO powers. The question that we have to answer, therefore, is whether the claimant has shown in its evidence that, on the balance of probabilities, a comprehensive redevelopment or refurbishment scheme that would have enhanced the rental value of North Block would have come forward. The only potential major opportunity that was relied upon by the claimant was the prospect for the redevelopment or refurbishment of Central House. It was clear from the draft proposals by Asda St James, who had been one of 13 bidders for the site but were unsuccessful, that they anticipated (as shown in the contemporaneous note from the 1998 presentation to the council) compulsory purchase powers would be required to enable a comprehensive redevelopment to proceed. We are not persuaded that, as Mrs Pullan suggested, a development of this size and complexity (over half the size of the Kirkgate Centre), would be likely without CPO powers particularly in the light of the extensive reconfiguration required to the highway network (which in part formed major arterial routes), and the road closure orders that would have been needed. We accept the evidence of both Mr Preece and Mr Maclure on this issue. We are also mindful that one of the major occupiers, Bhs, had, as well as a lease with a long reversion, been an objector at the CPO inquiry, and we agree with Mr Humphries' submission that they would have been an unwilling participant in a negotiation to acquire their lease.

84. Whilst it may have been possible to construct a convincing argument that a complete redevelopment of Central House, on the lines of the plans that Asda St James produced, may have been viable in commercial terms if it had proceeded, we certainly agree with the view of the council that refurbishment rather than complete redevelopment would not have made economic sense, due to the fact that a large number of the units were on the outer periphery where demand was low and where the number of long-term vacant units had historically been high, and which were of a type that according to the 2001 report by Dunlop Heywood, were "poorly configured and virtually unlettable". However, no evidence of the economic viability for redevelopment was adduced but, in any event, even if it had been, the provisions of section 6 and Schedule 1 to the 1961 Act would preclude us from taking it into account due to our

finding that CPO powers would have been required – not to acquire the freehold, as that had already been acquired by FSDP, but to buy out the extensive leasehold interests that were set out in the schedule produced by Mr Maclure.

85. No evidence was adduced as to any other piecemeal or major redevelopment that might have been anticipated in the Broadway area in the absence of the scheme and we conclude, therefore, that there was no prospect of rental values within North Block increasing as a result.

**(ii) Blight**

86. The claimant argued that the scheme caused blight which prevented the rents at North Block from increasing as they otherwise would have done. We do not accept that argument for the following reasons.

87. We have concluded that in the no scheme world any alternative scheme of redevelopment would have required compulsory purchase powers. Consequently the effect on rental values of any such alternative must be disregarded. Given this context the acquiring authority have made a convincing case that, in the no scheme world, there would have been continued rental stagnation in the North Block retail units. We accept that the existing shops in and around Broadway were tired, outdated and unattractive. The units were poorly configured, small and unsuitable for modern retail requirements. Mrs Pullan accepted in cross-examination that the main multiples were not generally looking at units of this size and that fashion retailers in particular would require larger shops. We note Mrs Pullan's comments that, being a framed building, North Block could be reconfigured fairly easily, as was the Pizza Hut unit at the junction of Broadway and Cheapside. However we do not believe that this potential for reconfiguration outweighs the fundamentally anachronistic character of the building in terms of modern retailing.

88. The loss of the nearby Rackhams department store in 1995 was significant and was said by Mrs Pullan to be much regretted. Although the store was redeveloped as six shops and included tenants such as Virgin and Boots the area lost the benefit of a major anchor store. This loss was compounded by the departure of several other major retailers from Broadway for reasons unconnected with the scheme, namely C&A, Mothercare, Dixons/Currys and Argos. In our opinion the development of phases 1 and 2 of the Forster Square Retail Park acted as a strong retail focus to the north of Broadway and attracted some of its tenants, such as Mothercare and Currys. However we are persuaded on the evidence that neither the White Rose Shopping Centre in Leeds nor the Owlcotes Centre in Pudsey had a materially detrimental effect upon retailing in Broadway.

89. Broadway was also hampered by its poor provision for car parking in comparison with the Kirkgate Centre. Furthermore North Block and Broadway were surrounded on two sides by the inner ring road, Petergate and Hall Ings, and to the north by the Cheapside dual carriageway. Market Street to the west was the subject of a traffic management scheme which had excluded (in theory) through traffic other than buses. Nevertheless although the scheme had improved the pedestrian environment, Market Street remained busy and an impediment to

shoppers going to and from the prime retail areas to the west. Nor do we believe that the introduction of retail kiosks into the pedestrianised area of Broadway made a material difference to the quality of, or prospects for, retailing in the area.

90. We accept Mrs Pullan's evidence that there was no chronic problem of vacant units in North Block or Broadway. However, it is clear that there was such a problem on the fringes of the retail area along both Hall Ings and the "Banana Building" in Petergate. In the no scheme world these vacancies would have continued and we agree with the acquiring authority that they added to an impression of decline.

91. We prefer Mr Hornby's interpretation of evidence of rateable values. This showed, firstly, a reduction of 20% in Broadway values between the 1995 and 2000 rating lists and, secondly, that in the 2000 list Broadway rateable values varied from between 52.4% and 61.1% of those for the prime retail area in Darley Street. Mrs Pullan sought to show that in arriving at the 2000 list figures for Broadway the Valuation Officer had had regard to the blighting effect of the scheme. However, she admitted that she had no evidence that this was the case. The antecedent valuation date for the 2000 list was 1 April 1998, namely at a time when the scheme was still in its infancy. Mrs Pullan used 1998 as the base year for her calculation of the unblighted differential between Broadway and prime rental values. She is therefore inconsistent in arguing that values at the antecedent valuation date for the 2000 rating list were affected by blight. We also note from Mrs Pullan's extended analysis of rateable values submitted at the hearing that the value of Darley Street properties rose by approximately 15% between the 1995 and 2000 rating lists whilst those in Broadway fell by approximately 20% over the same period. We do not accept that these differences can be attributed to the scheme but consider that they reflect the retailing problems faced by Broadway and North Block in any event.

92. We do not consider the two letters from JD Sports to be conclusive evidence of the existence of blight. In both letters reference is made to the CPO compounding a situation where there is a lack of evidence to support any rental increase. That lack of evidence was independent of, rather than consequent upon, the scheme. Nor do we consider that the evidence of blight contained in the Promis reports, the Audit Commission's annual letter regarding its 2002/03 audit nor local newspaper reports outweighs the evidence of the acquiring authority that Broadway in general, and North Block in particular, were in decline. We also note that the Audit Commission said of the Broadway area that it had long been overdue for redevelopment.

93. We therefore agree with the acquiring authority that the claimant has not discharged its burden of proof that the scheme caused rental blight. It is also appropriate for us to comment, in view of Mr Young's colourful and declamatory criticism of Mr Hornby's evidence on this point in his closing submissions, that we consider that all of the witnesses discharged their duty to this Tribunal in a professional manner.

### **(iii) Rental value at the valuation date**

94. The claimant relied heavily upon the single comparable in 1998 of the subletting at £80 per sq ft of 30 Broadway to Clinton Cards as described in that year's Promis report. Mrs Pullan conceded at the hearing that Promis had incorrectly reported this transaction. The correct analysis was either £57.50 (Mr Hornby) or £60.21 (Mrs Pullan). Mrs Pullan further asserted, without any evidence, that this rent should be increased by 20 per cent to reflect the existence of a restrictive covenant against clothes retailing. We do not consider that such uplift is warranted in the absence of any evidence and we accept Mr Hornby's observation that Broadway is not a location favoured by clothes retailers.

95. The revised analysis of the Clinton Cards transaction shows that rents in Broadway in 1998 were some 60% to 65% of prime rents. Those prime rents then increased to £140 per sq ft ITZA in 1999 where, according to Mrs Pullan's evidence, they remained until the valuation date. Rents in Broadway did not show such a step change in 1999 but remained at a maximum of £60 per sq ft and stayed at or around 50% of prime rents until the valuation date. We have already determined that the lack of rental growth at Broadway was not due to the blighting effect of the scheme. Mrs Pullan sought to show that there had in fact been rental growth in those parts of south Broadway and Market Street that were not required for the scheme. We accept Mr Hornby's rejection of this argument for the reasons which he gave and which are reported at paragraph 69 above. Mr Hornby's evidence, which we prefer, showed a consistent pattern of rental stagnation in south Broadway beyond the late 1990s and into the 2000s.

96. We conclude that in the no scheme world there would have been no rental growth in North Block from 1998 until the valuation date and we therefore adopt Mr Hornby's rental value at the valuation date of £629,350.

97. Both parties accepted that there would be a void period following the expiry of Mothercare's lease of 41 Broadway in December 2005. Mr Hornby considered this to be a substantial risk to an investor and allowed a period of 18 months for the re-letting of the property. Mrs Pullan argued that 7 Charles Street, which was combined with 41 Broadway in the Mothercare lease, would in future be let separately. In her original report Mrs Pullan said that 7 Charles Street would be vacant for three months and 41 Broadway for 6 months. She revised her estimate in respect of 41 Broadway during cross-examination to 12 months. Mrs Pullan assumed that by splitting these units the combined rent would be £290,000 pa, an increase of 45% over the passing rent on the combined unit at the valuation date. We consider this to be an optimistic estimate and, given our conclusions about blight, we prefer the more cautious approach adopted by Mr Hornby. We have therefore made an allowance for a void period of 18 months in respect of the combined unit at 41 Broadway.

### **(iv) Yield rate**

98. It was evident that Mr Westlake had undertaken a considerable amount of research, but his conclusions were, in the main, derived from the Yorkshire and Humberside IPD datasets, which, from a large sample, showed equivalent yields of 5.4% averaged across prime,

secondary and tertiary properties for 2005. This, he said, was in line with national statistics that indicated 5.5% at that time. He also considered the two sales of the Kirkgate Centre, and three other comparables in Bradford: Broadway House, being under offer in November 2005 (6.1%), the second not sold and the third, 33 Kirkgate, being a small investment let to a single occupant of good covenant in the prime central area (5.43%). However, Mr Hornby relied principally upon the Bradford IPD data which, whilst being taken from a much smaller sample, gave, in his view, a far more representative picture of yields in Bradford (6.1% for 2005), which were historically and consistently over 1.5% more than Leeds, and 1.1% more than the regional results produced in the Yorkshire/Humberside data. He also referred to 4 local comparables – the former Rackhams Building (6.6%), 33 Kirkgate and Broadway House (agreed with Mr Westlake at 5.43% and 6.1% respectively), and 32/34 Bank Street, (6.75% in April 2004).

99. Mr Hornby gave reasons why he could not place much reliance upon the sales of the Kirkgate Centre, and we agree with him. We also agree that his use of the local rather than regional or wider data was more appropriate, it being clear that there is, and has been consistently for over 25 years, a marked difference between Bradford yields and those from Leeds or the wider regional area. In the light of the evidence, and bearing in mind the location, age, condition and configuration of North Block together with the potential difficulties over the likelihood of re-letting the Mothercare units (and the fact that some capital cost would, in our view, have to be incurred on refurbishment and/or reconfiguration), we can see no prospect of a yield equivalent to that achieved on, for instance, 33 Kirkgate being obtained. We have noted that significant yield compression has taken place but the Bradford IPD figures do, in our judgment, speak for themselves (6.1%) and we are also particularly mindful of the yield achieved on the former Rackhams building (6.6%), which we agree to be a good comparable. Nevertheless, on the balance of the evidence, we do feel that Mr Hornby's figure was slightly pessimistic, and are of the view that 6.0% would more accurately reflect the investment as it stood, and its potentialities – for instance the possible opportunity, subject to planning, for some residential conversions to the upper floors.

100. Our Rule (2) valuation, set out in accordance with the methodology agreed by the parties, is at Appendix 1, and our calculations relating to the prospective rental void at 41 Broadway are at Appendix 2.

## **Valuation under Rule (6)**

### **(v) Loss of rental income between 2000 and the valuation date**

101. Mrs Pullan accepted that the vacant units at 39 and 43 Broadway would have taken longer to re-let than she had originally anticipated. We therefore accept Mr Hornby's estimates in this regard and, having regard to our conclusions that there would have been no rental growth, we adopt his figure of £82,907 which assumes the units would have been re-let at their previous rental levels.

**(vi) Empty rates**

102. It follows from (v) above that the empty rates will again be as Mr Hornby calculated: £10,875.

**(vii) Pre reference costs**

103. These were claimed in the sum of £16,526.25 and related to Mrs Pullan's and Mr Westlake's professional fees, calculated upon an hourly basis prior to the date of the notice of reference. Following the submission of detailed timesheets, and the council's queries in respect of the relevance of part of both experts' fees, the claimant produced a letter in explanation. We are satisfied that all of the time claimed was justified and relevant in the circumstances, and award the full sum claimed.

**Summary**

104. Our conclusions can be summarised as:

Value of long-leasehold interest at 20 September 2005	£ 8,921,000
Loss of rent	£ 82,907
Empty rates	£ 10,470
Pre-reference costs (net of VAT)	<u>£ 16,526</u>
Total	£ 9,030,903

105. We therefore determine compensation for the compulsory acquisition of North Block, Bradford in the sum of £9,030,903.

33. This decision determines the substantive issues in this reference. It will take effect as a decision for the purposes of an appeal when, and not before, the outstanding issue of costs has been determined. The parties are invited to make written submissions on costs and a letter accompanying this decision sets out the procedure for representations in writing.

Dated: 11 May 2007

P R Francis FRICS

A J Trott FRICS



**LANDS TRIBUNAL VALUATION**  
**of**  
**North Block, 3 Market Street, 1-9 Charles Street, 13-15 Cheapside**  
**and 35-45 Broadway, Bradford**

Gross Valuation

Rents receivable	£ 629,350	
YP 130 years (perp) @ 6.0%	<u>16,667</u>	
	£10,489,376	
Less agreed capital costs	£ 63,500	
Less allowance for void period at 41 Broadway	<u>£ 256,424</u>	
Net value before purchaser's costs and deductions	£10,169,452	
Less purchaser's costs @ 5.7625%	<u>£ 586,015</u>	
Net value before head rent deductions		£ 9,583,437

Permitted deductions

1. 3.5% of £629,350 rents receivable (capital costs)	£ 22,027
2. Fees on rent reviews/lease renewals (agreed)	<u>£ 5,000</u>
	£ 27,027

Head Rent

7% of rents received after permitted deductions	£ 42,163
Capitalised @ 6% for 130 years (perp)	£ 702,730
Net of purchaser's costs (£40,495)	<u>£ 662,235</u>
Valuation after deduction of head rent	£ 8,921,202
Say,	<b>£ 8,921,000</b>

**APPENDIX 2**

**41 BROADWAY**  
**Allowance for 18 month rental void**

Gross rent receivable	£ 200,000	
Less head rent payable:		
less 3.5% permitted deduction	£200,000 <u>£ 7,000</u> £193,000 <u>@ 7%</u>	
Net rent receivable	£ 13,510 £ 186,490	
YP 3 months @ 6%	<u>0.241</u>	£ 44,944
Reversion to net rent receivable	£ 186,490	
YP in perp deferred 21 months @ 6%	<u>15.051</u>	<u>£2,806,861</u>
		£2,851,805
 <u>Constituent part of original Valuation, assuming no void.</u>		
Net rent receivable	£ 186,490	
YP in perp @ 6%	<u>16.667</u>	<u>£3,108,229</u>
Difference		£ 256,424