



ACQ/143/2006

**LANDS TRIBUNAL ACT 1949**

*COMPENSATION – compulsory purchase – preliminary issues – land acquired for construction and improvement of highway – valuation of land acquired – set-off for betterment of land retained – access to retained land enabled by stopping-up of part of old highway on land of claimant – order providing for stopping-up made after valuation date – whether prospect of order being made to be taken into account – held, yes – date of entry – Highways Act 1980 s 261(1)(a)*

**IN THE MATTER OF A NOTICE OF REFERENCE**

**BETWEEN**

**ESSO PETROLEUM  
COMPANY LIMITED**

**Claimant**

**and**

**SECRETARY OF STATE  
FOR TRANSPORT**

**Acquiring  
Authority**

**Re: 2,335 square metres of hardstanding  
Esso Service Station  
Baynards Green  
Oxfordshire**

**Before: The President**

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL  
on 4 June 2008**

*Michael Barnes QC and Eian Caws* instructed by Bircham Dyson Bell for the claimant  
*David Forsdick* instructed by Treasury Solicitor for the acquiring authority

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The following cases are referred to in this decision:

*BP Oil UK Ltd v Kent County Council* [2003] RVR 118

*Welford v Transport for London* (ACQ/26/2007, 11 February 2008, unreported)

*Moto Hospitality Ltd v Secretary of State for Transport* [2007] RVR 247

The following further cases were referred to in argument:

*James Miller & Partners v Lothian Regional Council (No.2)* 1984 SLT (Lands Tr) 2

*Laing Homes Ltd v Eastleigh Borough Council* [1979] 1 EGLR 187

*Cooke v Secretary of State for the Environment* [1974] RVR 117

*Portsmouth Roman Catholic Diocesan Trustees v Hampshire County Council* (1979) 40 P & CR 579

*Hadley v Baxendale* (1854) 9 Ex 341

*Koufos v Czarndnikow Ltd* [1969] 1 AC 350

*The Wagon Mound* [1961] AC 388

*Bank of New Zealand v New Zealand Exchange Ltd* [2008] NZCA 25

*Pye v United Kingdom* [2007] ECHR 700

## DECISION ON PRELIMINARY ISSUES

### Introduction

1. The claimant in this case, Esso, claims compensation for the compulsory acquisition of an area of approximately 2,335 sq m of freehold land at its petrol filling and service station at Baynards Green, Oxfordshire. The land was taken under the A43 Trunk Road (M40-B4031 Improvement) Compulsory Purchase Order 2000. The date that the acquiring authority took possession is in issue, but it is agreed that this was between February 2001 and the end of July 2001.

2. Before the implementation of the scheme for the purpose of which the land was acquired the service station stood on the north-east quadrant of a junction consisting of a roundabout at which the A43 crossed the B4100, about 1 km north of the Cherwell Valley interchange on the M40 (see *Moto Hospitality Ltd v Secretary of State for Transport* [2007] RVR 247). It had two accesses, one from the eastbound lane of the B4100 and one from the southbound lane of the A43. Under the A43 Trunk Road (M40-B4031) Improvement Order 2000 (which was made on the same day, 10 May 2000, as the CPO) the A43 was to be constructed as a dual carriageway. At Baynards Green this required a new roundabout junction to be provided, 85 metres to the east of the existing one, with the dualled A43 taking a new alignment to the east of the existing road. The service station would thus be left on the north-west quadrant of the new junction. The access from the service station onto the B4100 would be closed, and the consequence of this would be that, although cars and other light vehicles would be able to gain access to and leave the service station, heavy goods vehicles would not.

3. Under the A43 Trunk Road (M40 to B4031 Improvement Side Roads) Order 2000 (also made on 10 May 2000) the former A43 was to be stopped up from a point 130 metres to the north of the junction with the B4100, the private access to Esso's land from the north side of the B4100 was to be stopped up, and a new private means of access was to be provided, running north from the service station and debouching onto the old A43 just south of the point at which it had been stopped up. This new access would enable the service station to be used by lorries. It would be constructed across land owned by a Mr Adams, which had been included in the CPO for this purpose. It is known as the Adams proposal.

4. The Adams proposal was never implemented. Another new access was provided instead. This utilised part of the old roundabout where it adjoined the Esso land. This part of the highway, which was no longer required as such, was stopped up under the A43 Trunk Road (Baynards Green Roundabout) Side Roads Order 2002, which was made on 5 May 2002. Since the land, subject to the highway, had always belonged to Esso and it abutted the reformed carriageway of the B4100, once the highway was stopped up Esso was able to form a new access onto the B4100 using this land.

5. The new road with its junction was constructed, and a new service station was erected under a planning permission granted in October 2001, utilising the existing access onto the old A43 and the new access onto the B4100 across the former highway land.

6. The claim for compensation is made under two heads: for the value of the land taken, under rule (2) of section 5 of the Land Compensation Act 1961, and for injurious affection of the land retained, under section 7 of the Compulsory Purchase Act 1965. An extensive (revised) statement of case was filed by the claimant, and an extensive (revised) reply has been filed by the acquiring authority, and, in the light of these and at the invitation of the parties, at a pre-trial review on 11 February 2008 I ordered that certain preliminary issues should be determined. In the event the exchange of skeleton arguments has enabled the preliminary issues to be reduced to two.

7. In order to understand how these two issues arise it is necessary to set out the way in which each of the parties addresses the rule 2 claim. Mr Michael Barnes QC for the claimant provided the following tabulation:

#### The Rule (2) Claim

Step	Value	Esso	Secretary of State
1.	Value of land acquired in isolation	£30,000	£40,000
2.	Value of retained land in isolation	£300,000	£350,000
3.	Value of whole of land	£2,000,000	£1,500,000
4.	Marriage value of land acquired and retained value	£1,670,000	£1,110,000
5.	Value of land acquired	£865,000	£595,000
6.	Rule (2) claim	£865,000	NIL

8. All the values in the table are no-scheme world values. The explanation for them is as follows. The land acquired would, in isolation, have been worth a relatively small amount owing to its size and to the limited use to which it could be put (step 1). The land retained could, in isolation, have been used as a service station but, because of its limited access, it would only have been worth £300,000 (per the claimants) or £350,000 (per the acquiring authority) (step 2). Taken together, however, the land acquired and the land retained would have been worth considerably more because of the two accesses that would have been available (£2m or £1.5m) (step 3). The marriage value of the two parcels (3 minus 1 and 2) would have been considerable (step 4). The value of the land acquired would have been half this marriage value plus its value in isolation (£865,000 or £595,000) (step 5). Step 6 is one that the acquiring authority say should be taken and the claimant says should not be taken. It is to deduct from the value at step 5 the betterment due to the access that was provided across the former highway land onto the B4100. The acquiring authority say that such deduction is required by section 261(1)(a) of the Highways Act 1980. The claimant says that no deduction is required. Whether it is required is the first preliminary issue.

9. The second preliminary issue is what is the valuation date? or (the matter on which the parties disagree) when did the acquiring authority enter on and take possession of the subject land? The claimant puts this date at 31 July 2001, the acquiring authority at 1 March 2001. The date matters, or may matter, because the parties agree that, if section 261(1)(a) applies, the prospect of the new access across the highway land onto the B4100 being provided and the effect of this on value are to be assessed as at the valuation date; and the acquiring authority say that, as at 1 March 2001, this potential access had not been thought of and could accordingly not affect the value of the land acquired.

**Issue 1: section 261(1)(a)**

10. It is agreed that a deduction for betterment only falls to be made if it is required by statute and that the only statutory provision that could apply is section 261(1)(a) of the 1980 Act. This provides that in assessing compensation for the compulsory acquisition of land under sections 239, 240 and section 246 the Lands Tribunal –

“(a) shall have regard to the extent to which the remaining contiguous lands belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired.”

11. The Secretary of State is empowered by section 239 to acquire land for the construction of a trunk road and, inter alia, the construction and improvement of highways; by section 240 to acquire land for use in connection with works of construction and improvement; and by section 246 to acquire land for mitigating any adverse effect of such construction or improvement. The CPO was expressed to be made under sections 239, 240 and 246 “and all other enabling powers”, and it provided:

“1. (1) The Secretary of State is hereby authorised to purchase compulsorily the land described in the Schedule to this Order and delineated and coloured pink on the plan.

(2) The land referred to in paragraph (1) of this article is authorised to be purchased compulsorily for the following purposes –

- (a) the construction of the new trunk roads at Baynards Green and Tusmore in the Parishes of Ardley, Stoke Lyne, Hardwick with Tusmore, and Cottisford in the District of Cherwell in the County of Oxfordshire in pursuance of the Trunk Road Orders;
- (b) the construction and improvement of highways and the provision of new means of access to premises at Baynards Green, Tusmore and Barley Mow in the Parishes of Ardley, Stoke Lyne, Hardwick with Tusmore, Cottisford and Mixbury in the District of Cherwell in the County of Oxfordshire; and in the Parish of Evenley in the District of South Northamptonshire in the County of Northamptonshire in pursuance of the Side Roads Order;
- (c) the improvement of the Trunk Road at the said Baynards Green, Tusmore and Barley Mow;

- (d) use by the Secretary of State in connection with such construction and improvement of highways.
- (e) the mitigation of adverse effects which the existence or use of the highways proposed to be constructed or improved will have on their surroundings.”

12. Mr Barnes said that the application of section 261(1)(a) required the identification of the purpose for which the land was authorised to be acquired. The “land” must, he submitted, be the land of the claimant, here the 2,335 sq m of hardstanding. The purpose for which that land was authorised to be acquired was (a) in article 1(2)(a) of the CPO, the construction of the new trunk road. It was no part of the purpose to enable the Secretary of State to make a stopping-up order in respect of part of the former highway land abutting the claimant’s retained land so that it could use that land as an access. The ability to make a stopping-up order might be a consequence of the acquisition (although it was not in contemplation at the valuation date as contended for by the claimant and was not in fact made until May 2002), but it was not part of the purpose for which the acquisition was authorised.

13. For the Secretary of State Mr David Forsdick submitted that the purpose of the compulsory acquisition was to implement the scheme encompassed in the 2000 orders. The orders were interdependent. There was no scope for dividing this general purpose into sub-purposes. The purposes referred to in the powers in section 239(1) to (3), construction and improvement of a highway, were general, in contrast for example to section 239(5), which enabled land to be acquired for the purpose of being given in exchange for common land or open space that was the subject of acquisition under the earlier subsections. Mr Forsdick accepted that the purpose of the acquisition was not the stopping-up order of 2002 or anything post the valuation date. However, he said, as at the valuation date, one benefit of the package of orders was the potential that they created for freeing up the subsoil of the highway land that would become redundant and the enhancement as a result of the value of the retained Esso land. A valuer would take this into account.

14. Mr Barnes, in my judgment, urges a construction of and an effect for section 261(1)(a) that are far too narrow. He says, and I accept, that the land referred to in the provision is the subject land in particular case. It is, he says, the specific purpose for which that land was to be acquired, and only that specific purpose, that was relevant to the application of the provision, and that purpose was the construction of a trunk road. Logic pursued as relentlessly as this would suggest, it seems to me, that the purpose was only the construction of that very small part of the new road that was to be carried out on the claimant’s land. But Mr Barnes contended that the purpose of constructing the rest of the road on other land in the CPO could be taken into account. It seems inconsistent with this to contend as he did that purpose (b) in article 1(2) of the CPO, which included “the provision of new means of access”, was not part of the purpose under section 261(1)(a) because such access was to be provided on land other than the subject land. The fact is that the CPO set out the purposes of the acquisition without attributing them to the individual numbered plots on the CPO plan. Moreover the CPO, as was necessary, incorporated reference to the Trunk Roads Order and the Side Roads Order in pursuance of which the works of construction and improvement were to be carried out. Together these provided for the scheme that was to be carried out (cf “the works” in *Moto*

[2007] RVR 247 at para 55), and it was this scheme that was in my judgment the purpose of the acquisition.

15. It would be remarkable if, as Mr Barnes contended, the particular purpose contained in article 1(2)(b), the provision of new means of access, was to be excluded when applying section 261(1)(a). The Adams land was included within the CPO specifically so that a second means of access to the subject land could be secured, and the Side Roads Order authorised the works to provide such access. If that access had been provided, Esso would have ended up with a valuable two-access service station but would, on the basis of Mr Barnes's contention, be entitled to compensation as though the access had not been provided. In my judgment the provision of the Adams access was undoubtedly part of the purpose of the acquisition under section 261(1)(a) and the prospect of its provision would fall to be taken into account when valuing the land taken as at the valuation date.

16. The wording of section 261(1)(a) is, on one view certainly, not perfect. It refers to the claimant's remaining contiguous lands being benefited "by the purpose for which the land is authorised is to be acquired". It can obviously be said that it is not the purpose of the acquisition that may benefit the retained land but the implementation of that purpose (or the prospect of its implementation). But the meaning seems to me to be sufficiently clear. Quite simply, "purpose" is here used to mean the scheme or the project (to use the term favoured by the Law Commission in its report *Towards a Compulsory Purchase Code: (1) Compensation (2003)*), and it is the benefit derived by the retained land from the scheme or project that is to be brought into the reckoning.

17. That this is the intended effect of the provision can be seen by considering the totality of section 261(1) and its statutory history. The Lands Tribunal –

- “(a) shall have regard to the extent to which the remaining contiguous lands belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired;
- (b) without prejudice to the generality of paragraph (a) above, shall in the case of land authorised to be acquired for widening a highway set off against the value of the land to be acquired any increase in the value of other land belonging to the same person which will accrue to him by reason of the creation of a frontage to the highway as widened; and
- (c) shall take into account, and embody in its award, any undertaking given by the highway authority as to the use to which the land, or any part of it, will be put.”

18. In its original form the provision was contained in section 13(1) of the Restriction of Ribbon Development Act 1935, and it then became included in its present form in section 222 of the Highways Act 1959. Section 13(1) provided as follows:

“Any highway authority may acquire any land within two hundred and twenty yards from the middle of any road the acquisition of which is, in their opinion, necessary for the purposes of the construction or improvement of the road or of preventing the

erection of buildings detrimental to the view from the road and ... they may purchase the land compulsorily ....

Provided that the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, as incorporated in the order, shall be subject to the following modifications, that is to say, in determining the amount of any compensation –

- (a) the arbitrator shall have regard to the extent to which the remaining contiguous lands belonging to the same person may be benefited by the purpose for which the land is authorised to be acquired, and in particular (without prejudice to the generality of the foregoing provisions of this paragraph) shall, in the case of land authorised to be acquired for the widening of any road, set off against the value of the land to be acquired any increase in the value of other land belonging to the same person which will accrue by reason of the creation of a frontage to the road as widened; and
- (b) the arbitrator shall take into account and embody in his award any undertaking given by the highway authority as to the use to which the land, or any part thereof, will be put.”

19. The context in which the provision was enacted was the pre-1947 planning world. Under the Town and Country Planning Act 1932 county borough and district councils could prepare planning schemes for the control of development (section 1), but compensation was payable for the decrease in value of any property injuriously affected by the scheme (section 18). The requirement to pay compensation was a severe inhibition to the preparation of planning schemes, and where development was carried out was thus essentially determined not, as now, by the provisions of the development plan but by location. Land on the fringe of a town would be “ripe for development” because the necessary services were at hand or could readily be extended. Highway access was of prime importance and a new or improved road, given the common law right of access to the highway from frontage land, opened up development opportunities. A by-pass round a town or the improvement of an old road to fit it for the increase in motor traffic would lead to housing development along and behind the road frontage. The 1935 Act provided for the imposition of restrictions on development along the frontages of roads. It also addressed the increase in value that would accrue to a landowner if a new or improved road made land along and behind the road frontage ripe for development. If land needed to be acquired from such a landowner to construct or improve the road the increase in value in his contiguous retained land created by the road would be offset against the compensation. That was the purpose of the proviso to section 13.

20. The provision for offsetting this value was both general in terms (what is now (a) in section 261(1) of the 1980 Act) and specific (where a new highway frontage was created: what is now (b)), although it was made clear that the specific provision was part of the generality and both appeared in the same paragraph. The purpose was to offset the landowner’s gain from the scheme through the increase in value of his contiguous land against the compensation due to him. To enable him to carry out development on that land he might need to construct further roads and to lay sewers. It might also be necessary, for instance, for the district council



to use their powers under the Public Health Act 1875 to lay new off-site sewers. The increase in value of his land to be taken into account under section 13 would reflect these factors, including, therefore, the expectation that the district council would exercise their statutory powers.

21. Viewed against this background it is clear, I believe, that the meaning that Mr Barnes seeks to give section 261(1)(a) is far too narrow. The purpose of the provision is, in my judgment, clear. It is to bring into account the increase in value of the claimant's retained contiguous land arising from the scheme so that this can be set off against the value of the land taken. Such increase in value falls to be determined as at the valuation date in the light of all the factors that bear upon it at that time. If at the valuation date there was a prospect that the Secretary of State would exercise his power to make a stopping-up order in respect of the redundant highway land, so that Esso could use it to provide a second access, that would fall to be taken into account. That prospect – if indeed it was a prospect, and one that the market would have recognised, at the valuation date (and this will be a matter for evidence at the substantive hearing) – was created by the scheme, and I can see no reason why it should not come into the reckoning.

22. I should add that Mr Barnes also argued that to apply section 261(1)(a) in accordance with the Secretary of State's contentions would be contrary to Article 1 of the First Protocol to the European Convention on Human Rights, since it was on the one hand acknowledged that the full market value of Esso's land as acquired was £595,000 but on the other hand asserted that the compensation should be nil. There is in my judgment nothing in this point. Section 261(1)(a), to the extent that it affects the valuation, simply ensures that the claimant does not receive by way of compensation more than the amount that he has lost through the acquisition of his land by providing that such benefit as the scheme has conferred on him in respect of his contiguous land is offset against his loss in respect of the land acquired.

## **Issue 2: date of entry**

23. The second issue is the date when the acquiring authority entered and took possession of the subject land. The facts, so far as they are known, are not in dispute. They are set out in a witness statement by Mark Jamieson, a Chartered Civil Engineer with White Young Green, who were agents for the Highways Agency in the implementation of the A43 Towcester to M40 Dualling scheme. Mr Jamieson was the Project Engineer. The contractor was Costain Skanska JV UK.

24. Mr Jamieson said that he was directly involved in discussions with Esso, assisted first by the District Valuer, Alastair Johnson, and then by David Bulmer, a petrol filling station specialist appointed by the District Valuer, from some point in February or March 2001. The discussions related to the desire of the Highways Agency to accommodate Esso's operations during the works and to mitigate the impact on Esso arising from the scheme. Mr Jamieson said that he was aware that during the public inquiry into objections to the CPO an alternative access/egress arrangement was put forward and approved by the Secretary of State and that it required the acquisition of some of Mr Adams's land. Esso had been asking for access directly

to the new roundabout, but this could not be safely delivered. He said that it was always his and Costain Skanska's intention to minimise disruption to Esso and to allow it to continue normal operations for as long as possible. On 15 March 2001 he wrote to Esso. At that point the illustrative access proposals showed use of Mr Adams's land, as at the public inquiry. He was very aware that Esso and he had to grapple with how the petrol filling station would work with the new access/egress arrangements. At that time he was not aware of any reason why the access across Mr Adams's land could not be delivered. He had a meeting with Esso on 10 April 2001, and at that meeting the appropriate means of addressing Esso's position were discussed, including the possibility of a stopping-up order to provide more land for an Esso redevelopment scheme.

25. As to the date of entry, the following matters from Mr Jamieson's evidence are to be noted. Notice of entry was served on 20 September 2000 under cover of a letter of that date from the Highways Agency, which included the following:

“The main contract is not expected to start until mid-November, at the earliest, however, we need to take early possession of these plots now to enable us to undertake advance tree clearance.”

Aerial photographs taken during February 2001, Mr Jamieson said, showed that the hedgerows adjoining Esso's boundary were intact, that no fences in connection with the works had been erected to the north of the roundabout and that the access from Esso's land to the B4100 remained open. Photographs taken during March 2001 showed a blue accommodation fence on Mr Adams's land and the removal of the hedgerow forming the boundary between Esso's land and Mr Adams's land. Mr Jamieson said that the hedges were taken out at that time to avoid problems with bird nesting. There was also a problem with foot and mouth disease which caused programming difficulties, particularly in relation to vegetation clearance and bird nesting. They were therefore keen to remove all vegetation as soon as they were able to. Up to March 2001, therefore, said Mr Jamieson the only works carried out on Esso's land consisted of the removal to just above ground level of the hedgerows and other vegetation.

26. The site engineer's diary for 22 June 2001 recorded topsoil clearance at the Esso service station. An aerial photograph at that time showed that topsoil had been stripped from part of the CPO area but that the area containing the petrol interceptor and the septic tank had not been stripped. A photograph dated 24 July 2001 showed the construction of the new roundabout partially completed on the south side of the B4100. On 1 or 2 August the access to the B4100 from the service station was closed.

27. Mr Barnes submitted that the works carried out in February or March 2001 to remove the hedges and other vegetation constituted entry on the land for the purpose of the operation of the statutory provisions. Mr Forsdick said that it did not. Taking down trees and removing vegetation was, he submitted, a pre-acquisition step. Physical entry on the subject land was not sufficient: there must also be a taking of possession. Both counsel relied on the decisions of this Tribunal (George Bartlett QC, President) in *BP Oil UK Ltd v Kent County Council* [2003] RVR 118 and *Welford v Transport for London* (ACQ/26/2007, 11 February 2008, unreported).

28. In *Welford* I said this at paras 19 to 20:

“19. The acquiring authority’s primary case was that entry on the land had taken place on 27 November 2000 as evidenced by their records... There is no evidence as to what physical acts, if any, were carried out in relation to the land. A mere assertion of possession would not be sufficient to constitute entry, and, in the absence of any evidence of any physical acts of possession, the contention that entry was effected on 27 November 2000 must necessarily fail.

20. Mr Zwart relied on the words in section 11(1), empowering the authority to “enter on and take possession”, as showing that entry on the land was not sufficient and that there must also be a taking of possession. I do not think that anything useful is to be derived from the wording of the provision. ‘Entry’ as it has come to be used in the compulsory purchase legislation implies the taking of possession. What constitutes entry will depend on the circumstances, but, in the absence of a formal surrender of possession by the owner (for instance through handing over keys) it must require that some physical act in relation to the land is done for the purpose of effecting the acquisition: see, for example, *BP Oil UK Ltd v Kent County Council* [2003] RVR 118 at paragraphs 17 and 18 (reversed, but not on this point, at [2003] RVR 276). Acts that are referable to some other purpose are not sufficient. Thus in *Standish v Mayor of Liverpool* a contractor who simply left wagons, tram plates and rails on the land by agreement with the owner in advance of beginning the works that he was contracted to carry out for the acquiring authority was held not to have effected entry on behalf of the authority. And entry for the purpose only of surveying and taking levels will not constitute entry because that can be done under the statutory power for that purpose in section 11(3) of the 1965 Act: see *Burson v Wantage*.”

29. There is no dispute that if entry on the land for the purpose of clearing hedges and other vegetation amounted to entry for the purpose of the operation of the statutory provisions it constituted entry on the whole of the subject land, so that the fact that Esso were able to continue operating the service station was immaterial, therefore. In my judgment, entry on the land for this purpose did constitute entering and taking possession in the exercise of the acquiring authority’s statutory powers. These were the works for which, in its letter of 20 September 2000, the Highways Agency said that it needed “to take early possession.” The works themselves were not minimal; they were carried out for the purpose of enabling the construction operations to proceed; and there is no suggestion that they were carried out under licence or some other statutory provision. They are referable, therefore, only to the exercise of the acquiring authority’s powers under the CPO.

30. There was no evidence of the precise date when the works of clearance were carried out. It was some time in either February or March 2001. Mr Barnes suggested that the mid-point, 1 March 2001, should be taken as the date of entry (and the valuation date) if I determined that the carrying out of clearance works constituted entry. I did not understand Mr Forsdick to dissent from this, and accordingly I determine the valuation date to be 1 March 2001.

## **Conclusion**

31. I determine the preliminary issues as follows:

- (a) The prospect, as it existed at the valuation date and as it would have been perceived by the market at that time, of the Secretary of State making the stopping-up order that he in fact made in the Side Roads Order of 5 February 2002 is to be taken into account for the purpose of applying section 261(1)(a). Further, and in any event, the Adams proposal is to be taken into account for that purpose.
- (b) The date of entry, and therefore the date of valuation, is 1 March 2001.

32. The parties are now invited to make submissions on costs, and a letter dealing with this accompanies this decision, which will become final when the question of costs has been determined. Directions for the further conduct of the proceedings will then be given.

Dated 6 June 2008

George Bartlett QC, President