



ACQ/1/2007

**LANDS TRIBUNAL ACT 1949**

*COMPENSATION – compulsory purchase – acquisition of bungalow, farm buildings and land forming part of smallholding in connection with motorway scheme – valuation – comparables – disturbance – Land Compensation Act 1961 section 5, rules (2) and (6) – compensation determined at £505,000*

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

**BETWEEN**

**REGINALD SAMUEL THOMAS**

**and**

**SHEILA MARY THOMAS**

**Claimants**

**and**

**THE HIGHWAYS AGENCY**

**Acquiring Authority**

**Re: Longacres, Wolverhampton Road, Shareshill,  
Wolverhampton WV10 7LT**

**Before: P R Francis FRICS**

**Sitting at: Dudley County Court, Harbour Buildings,  
Waterfront West, Brierley Hill, West Midlands DY5 1LN**

**on**

**18 March 2008**

Reginald Thomas (Jnr), with permission of the Tribunal, for the claimants  
*Colin Thomann*, instructed by Treasury Solicitors, for the acquiring authority

The following cases are referred to in this decision:

*Harvey v Crawley Development Corporation* (1957) 1 QB 485

*Service Welding Limited v Tyne and Wear County Council* (1979) 38 P&CR 352

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## DECISION

1. This is a decision to determine the compensation payable by the Highways Agency to Mr & Mrs R S Thomas (the claimants), under the Birmingham Northern Relief Road (Saredon to Churchbridge section) Compulsory Purchase Order (No PS1) 1998 (the CPO), following the compulsory acquisition of part of Longacres, Wolverhampton Road, Shareshill, Wolverhampton WV10 7LT (the subject property) in connection with the construction of the M6 Toll Road.

2. Reginald Thomas (Jnr) appeared on behalf of the claimants (his parents), with permission of the Tribunal. He called no witnesses. Colin Thomann of counsel appeared for the Highways Agency and called Raymond Stewart Jeffries MRICS of the Valuation Office Agency, who gave expert valuation evidence. I carried out an accompanied inspection of the subject property, and 3 of the comparables referred to in the evidence, on 17 March 2008.

### **The Claim**

3. The claimants were claiming £645,934 for the bungalow, adjacent paddock, farm buildings and land extending to approximately 7,800 sq m (1.927 acres) as designated within the CPO, and items of disturbance relating to the acquisition (which I set out in detail below), together with an additional £100,000 for “stress and inconvenience”. The Agency had valued the claim in the sum of £421,318.96, this being revised to £423,673.96 in the statement of agreed facts and issues produced immediately before the hearing, and thence to £424,801.96 following recalculation of, and agreement on, some land and building areas during the hearing. I confirmed at the hearing that the latter part of the claimants’ claim did not fall within the Tribunal’s jurisdiction.

### **Facts**

4. The parties produced a statement of agreed facts, a summary of the issues that had been agreed prior to the hearing, and an itemised list of those remaining to be resolved, incorporating brief notes as to the parties’ current positions on them. From this, the claimants’ statement of claim, the agency’s reply and the evidence, I find the following facts.

5. Proposals for a new toll motorway to the north of Birmingham to relieve congestion on the M6 motorway were first considered in the early 1980s, and following public consultation on up to 5 alternative route options, a preferred route was chosen in 1986, this being revised in 1992, following which draft orders for the compulsory acquisition of the required land were published. The claimants, knowing their land was to be affected, served a blight notice, this being subsequently accepted by the acquiring authority, and negotiations between the parties commenced but did not bear fruit. Following a public inquiry, the Secretary of State confirmed the CPOs on 23 July 1997. Notice to Treat was served upon the claimants on 23 December 1999, notice of entry was served in July 2000 (at which time the blight notice lapsed), and entry was taken between 11 and 20 November 2000, the valuation date for the

purposes of this reference being agreed at 17 November 2000. Continued failure to agree terms by negotiation resulted in a notice of reference being lodged with the Tribunal on 3 January 2007.

6. The total area of land originally sought to be acquired from the claimants, as shown on the CPO plan, comprised:

Plot 12/313	Bungalow and garden, adjacent paddock, driveway, buildings and half road width A460	7800 sq m (1.93 acres)
Plot 12/313a	Pasture (part of OS 6444)	435 sq m}
Plot 12/313b	Pasture (part of OS 6444)	710 sq m}
		(0.28 acres)

In the event, a reduced area of land was taken in plot 12/313, the new “as built” fence line on the southern boundary of this triangular plot, separating the land taken from the retained land, being located slightly north of the original planned location. This was to accommodate, and prevent damage to, the footings of a new building that the claimants proposed to, and subsequently have, constructed on the retained land. The parties were unable to agree either the total area of the land actually taken on this plot, or the individual areas occupied the bungalow and garden, the adjacent paddock, and the area occupied by the buildings. Mr Jeffries assessed the whole of plot 12/313 at 6,700 sq m (1.656 acres) including the half road width, or 6,025 sq m (1.489 acres) excluding the half road width. The claimants said they had been deprived of the whole 7,800 sq m (1.93 acres). The disputed area between the originally proposed CPO boundary and the as built fence had not been physically measured or calculated. The area of plots 12/313a and 12/313b was agreed at 1,145 sq m (0.28 acres).

7. Prior to the scheme, the claimants’ property comprised a detached brick and tiled bungalow built in the 1950s and subsequently extended, an adjoining single garage, a range of farm buildings and approximately 36 acres of land in the freehold ownership of the claimants, this being farmed in conjunction with a further 150 acres of land which they held under various agricultural tenancies and licences. The claimants had owned the farm for over 40 years, operating an agricultural business that included a suckler herd with a quota for 47 cows, and an agricultural engineering business. The bungalow contained oil fired central heating, oak block floors to principal rooms and leaded pane, single glazed windows. Some modernisation had been effected including the provision of modern kitchen units. The accommodation, which had an internal floor area of 243 sq m, comprised hall, two reception rooms, kitchen, 4 bedrooms, bathroom, separate wc and cloakroom, and was not subject to an agricultural occupancy restriction. The property had a frontage to the busy A460 Wolverhampton Road in a predominantly rural area, but there were, and remain, a number of detached houses forming an isolated “ribbon” development on the opposite side of the road, a short distance to the north east. The claimants have subsequently constructed, and now occupy, a replacement dwelling on the retained land.

8. To the rear of the bungalow were a series of farm buildings described as:

Building 1 & 2	Long, narrow, single storey brick built unit with asbestos roof	67.00 sq m
Building 3	Wooden shed with adjoining open-fronted implement shed	48.50 sq m
Building 5	Cattle pen/store, asbestos clad block walls and asbestos roof	195.50 sq m

Building 6	Nissen hut	57.50 sq m
Building 15	Open fronted bull pen with asbestos sheet barrel roof	11.25 sq m
Building 14	Steel framed, asbestos and plastic clad open fronted fodder store	<u>99.00 sq m</u>
		478.75 sq m

At the hearing, the total area of these buildings was agreed to be 487.125 sq m. All the buildings had an electricity supply connected.

9. A further workshop, building 4, extending to 120 sq m and constructed of a light steel frame, with asbestos sheet roof, and asbestos clad external walls, was lined internally, had 3-phase power connected and had the benefit of a Certificate of Lawful Use for “welding, fabrication, mechanical repairs and storage”. In addition on the land were two further buildings that do not form part of this reference: building 13 that was acquired by agreement as part of a separate negotiation, and building 12, an asbestos clad open fronted unit of 84.61 sq m, which was acquired at £15,000.

## Issues

10. There were 37 heads of claim in all, 5 relating to the value of the land and buildings (Land Compensation Act 1961, section 5, rule (2)), and 32 relating to disturbance (rule (6)). For the sake of expediency, I set out below a list of the 20 items that were agreed prior to, or at the commencement of the hearing, and then summarise the parties’ evidence on each of the disputed heads and determine them individually.

## Agreed items

<i>Claim reference</i>	<i>Item</i>	<i>Compensation</i>
2.3	0.28 acres of land (plots 12/313a and 12/313b) @£6,500 per acre	£ 1,820.00
4.3	Haulage costs for taking cattle to market	£ 1,515.25
4.4	“Luck money” paid to purchasers on sale of cattle	£ 327.00
4.5	“Extensification premium” at £123.01 per head of cattle sold	£ 5,781.47
4.6	Stock valuation fees	£ 642.60
4.7	Two years loss of profit on farming and engineering enterprises	£ 18,000.00
4.8	Devaluation of machinery	£ 500.00
4.9	Provision of track to temporary living accommodation	£ 5,100.00
4.10	Removal of hedge and gate to provide requisite visibility splays	£ 520.00
4.11	New signage	£ 135.00
4.12	Temporary water and sewage connections	£ 2,597.39
4.14	Provision of meter housing for temporary electricity supplies	£ 2,500.00

4.15	Temporary telephone connection	£ 84.25
4.16	Temporary storage of household furniture and effects	£ 5,020.00
4.18	Cost of providing and fuelling generator	£ 3,500.00
4.19	Removal costs/casual labour	£ 11,680.00
4.20	Re-installation of 3-phase electricity supply	£ 25,807.00
4.25	Compensation for loss of 4 chicken sheds	£ 600.00
4.29 and 4.29a	Claimants' time spent on CPO matters to 20 April 2004	£ 3,000.00
	Claimants' time spent on CPO matters to 11 December 2006	£ 600.00
5.1	Capital Gains Tax valuation fee	£ 250.00
	<b>TOTAL AGREED COMPENSATION</b>	<b>£ 89,979.96</b>

## **Disputed issues – land taken**

### *Claim item 2.1 Longacres bungalow and garden.*

11. The claimant contended that the bungalow, which contained 4 bedrooms and which he estimated to have been worth £350,000 at the valuation date, had been constructed to a high standard, had a modern fitted kitchen and oak block flooring, and occupied a quiet rural position, which was not directly overlooked by neighbouring properties. However, he did accept that it was in “pretty much original condition”. It formerly occupied a plot of 1,275 sq m (0.315 acre) but when an extension was built on one side in latter years, the formal gardens to front and rear had been extended by 295 sq m to give an overall area of 1,570 sq m (0.387 acres). Mr Thomas said that although this revised area was agreed with Mr Jeffries, the extra land that had been incorporated into the formal gardens had not been taken into account in his (Mr Jeffries’) valuation.

12. Mr Thomas said that he did not accept the acquiring authority’s contention that the property, fronting as it did onto the A460 which was alleged to take 27,000 vehicles per day, would have suffered noise equal to that which had been measured outside a number of houses on the opposite side of the road at 73.8 decibels (dB). The front walls of those properties, he said, were 17.5 metres from the kerbside, whereas Longacres bungalow was 26.5 metres away. Whilst he did not have any noise evidence, he said he was of the view that levels would have been below 68 dB, the point at which the provision of double glazing would have been mandatory. He said that, in determining his valuation at £275,000, Mr Jeffries appeared to have discounted what would otherwise have been his own view of the full open market value at £330,000 by 20% to reflect noise levels, and that was the principal difference between them. Mr Thomas said he relied upon the sale of Hollybank Farm which was located at the junction of Old Landywood Lane (A462) and Warstone Road on the edge of Essingham. That was a slightly smaller, 3 bedroom bungalow fronting a busy road junction and included 2 fields and an area of woodland together with an extensive range of outbuildings. It was sold prior to auction in 1989 for £330,000 and was subject to an agricultural occupancy restriction which, he said, would have reduced its value by 35%. He then made allowances for the additional 10 acres of pasture land (which he has subsequently rented from the current owner), 3 acres of woodland and the farm buildings to give a net valuation of £268,500 on a like-for-like basis which, with 35% added to reflect the restriction, gave a figure of £362,500. That was a September 1989 figure and, Mr Thomas said, the house price indices showed a 9% increase in values by the valuation date, which gave £395,000. Thus, he said, that amply demonstrated that his estimate of £350,000 for Longacres bungalow was soundly based.

13. In cross-examination, Mr Thomas acknowledged that, in noise terms, a difference of more than 3 dB was needed before it became discernible to the human ear, but insisted that the fact his property was significantly further away from the road must make it quieter – as demonstrated by the noise level readings taken on the properties opposite which showed levels decreasing at greater distances. The reason, he said, that noise readings were never undertaken on Longacres was because such readings were only taken on properties where traffic noise levels may exceed 68 dB. As to Hollybank Farm, he did not accept the suggestion that it was a significantly better property, being in a quieter location and having buildings and land that were ideal for equestrian use.

14. Mr Jeffries has 34 years valuation experience within the public sector, and as team leader for the VOA's West Midlands Highways Team, has been involved with the scheme since its inception. In his main report, he set out the background to it, and details of the negotiations he had had with the claimants and their various formerly appointed valuers, and dealt with each of the issues in dispute. He subsequently produced two rebuttal reports in response to the claimants' supplemental documentation. Mr Jeffries said he had commenced negotiations initially with Stephen Hinton FRICS, who was then replaced by Stephen Walker FRICS of Bruton Knowles, but on 2 June 2006 he was advised that Mr Walker was no longer acting for the claimants, and negotiations have since continued directly with the Thomas's. He said that during the period that he was negotiating with Mr Walker, from April 1998, it had always been known that the preferred route for the M6 Toll would take in part of the subject property and that was the reason why notice to treat was served as early as 1999. The fact that the claimants took no action in connection with obtaining planning permission for, and subsequent construction of, the replacement bungalow had made the situation more difficult both for themselves and for the acquiring authority.

15. As for the bungalow and garden, he said that it was located very close to an extremely busy trunk road that led to junction 11 of the M6. Turning right into the property could be extremely difficult, as could joining the road from it. The property would have suffered from traffic noise pollution equal to the levels recorded at those on the opposite side of the road that had been subject to pre and post scheme noise readings by Hoare Lea Acoustics. The noise reports were used by the Highways Agency and private surveyors mainly in connection with claims under part 1 of the Land Compensation Act 1973 and the reason the subject property was not specifically included was because it was due to be, or had been, demolished by the time it was undertaken. Nevertheless, in the light of the claimants' arguments, he said that he commissioned a further report from Hoare Lea which was "to determine the predicted road traffic noise levels that would have occurred ...in 2001". In Hoare Lea's letter of 3 December 2007, the assessment basis was said to be:

"The predictions have been made using the same digital noise model previously prepared by Hoare Lea Acoustics to evaluate road traffic noise levels at a wide range of locations in the vicinity of the M6 Toll Road Development. All input data to the model such as road routes, traffic volumes, flow speed and terrain profile are identical to those used for the original calculations. The only addition to the digital noise model was the inclusion of a building structure to represent the Longacres Farm Bungalow. The Longacres Farm Bungalow was positioned in the noise model according to the 'Land Interest' plan information supplied to Hoare Lea Acoustics by the Highways Agency."

The letter went on to describe in detail the calculation methodology, and concluded:

“The results of the calculations have determined a maximum noise level of 72.9 dB  $L_{A10, 18 \text{ hour}}$  at the facade position of the bungalow nearest to the A460. The lowest calculated noise level was 52.7 dB  $A_{10, 18, \text{ hour}}$  on the side of the house that faces away from the A460...”

16. Mr Jeffries said that he had included this report to verify the noise levels that he had experienced when he first inspected the subject property, and to confirm his view that a difference in distance from the road of only a few metres make no material difference to the amount of noise pollution suffered. He said he certainly did not accept Mr Thomas’s assertion that the property was quietly located, and that it did not suffer from significant traffic noise. He also said that he had not, as had been suggested, arrived at a valuation of circa £330,000 and “knocked off” 25% for the noise. He said he had based his assessment on 3 comparable sales and one settlement that had been agreed in connection with the scheme. His valuation did reflect the fact that the property was in a very noisy position, but his figure had not been arrived at by simply deducting a percentage from what would have otherwise been the case.

17. His first comparable was Ashley House, an extended 5 bedroom house in a 0.46 acre plot at Old Stafford Road, Slade Heath, Wolverhampton, which was sold on 15 December 2000 for £290,000. It was in a quiet rural area which was much more sought after, and was well appointed. Croft Cottage, Old Stafford Road, Slade Heath, Wolverhampton is in a similar quiet location to Ashley House, Mr Jeffries said, but it does have a main railway line to the rear. It is a modern dormer style detached 4 bedroom house set well back from the road over an imposing access drive, and has a plot of 1.8 acres. It sold for £295,000 on 24 July 2000. Both this property and Ashley House were within about 3 miles of the subject property, were in his view superior, and were a good indication of what could be bought in the market at the time for less than £300,000. New Buildings Farm, Croxall, a 113 acre arable farm, was sold in June 2000 in 4 lots. Lot 1, which was the comparable element, sold for £230,000, and comprised a 4 bedroom detached farmhouse, a range of outbuildings described as suitable for equestrian use (with a large grain store suitable for conversion to a ménage), and 6.12 acres of land. It was in a quieter location than the subject property, Mr Jeffries said, and after allowing £25,000 for the land element, based upon the figures achieved for the other lots, left £205,000 for the house and buildings. This comparable, he said, more than supported his figure of £275,000 for Longacres Bungalow.

18. Mr Jeffries finally referred to Lodge Farm, Lodge Lane, Cannock, a post valuation date settlement in connection with the scheme. Although it was accepted that this was after the valuation date, and contained several issues that could muddy the waters in terms of direct comparability, the fact that it had been agreed that there was a £60,000 reduction in value due to the proximity of the new M6 Toll, demonstrated that noisy environments do have an effect on value. He said that whilst he accepted that none of the comparables were bungalows, all of them were considered to be superior to the subject property and were certainly in less noisy locations.

19. In connection with Mr Thomas's use of Hollybank Farm as a comparable, Mr Jeffries said he had spoken to the auctioneers regarding the circumstances of the sale, and pointed out that the reason for it having been withdrawn from the auction was because the vendors received an offer that was considerably more than their expectations had been. The property was also subject to an agricultural restriction, had buildings and land ideally suited for equestrian use (even if that was not what they were subsequently used for), was in a quieter location than the subject property, on the "urban fringe" of Essingham and, most importantly, the sale was over 11 years before the valuation date.

## Conclusions

20. Firstly, the question of noise. Mr Thomas made much of the fact that a noise report was not commissioned on the subject property, and quite unjustifiably in my view, accused Mr Jeffries of massaging or making up figures, and applying incorrect measurements to support his argument that decibel levels would have been very similar indeed to those recorded at the properties on the other side of the road. It appears to me, from a detailed study of the evidence, that Mr Jeffries commissioned the retrospective exercise by Hoare Lea Acoustics out of frustration at being unable to reach an agreement on this point. Even if it had not been obtained, I would have accepted Mr Jeffries' argument that, despite Longacres bungalow being a few metres further away from the road, it would have suffered from very similar noise levels. That report, which I accept, simply confirms that view. Mr Thomas said that the bungalow was "quiet", and that he did not think its frontage to a road as busy as the A460 would justify a reduction in value. He said that it was no problem getting access and egress but, on a major trunk road that had had its traffic levels professionally monitored at approaching 27,000 vehicles per day, I simply cannot accept that to have been the case.

21. Mr Thomas's use of Hollybank Farm was, on the face of it, helpful, and the fact that he made adjustments in connection with the land, the agricultural restriction and the date of sale to make it a "like-for-like" comparable indicates a genuine attempt by him to assist the Tribunal. However, the level of adjustments that are necessary to reflect those differences, and particularly the fact that the sale was over 11 years prior to the valuation date, mean that I am unable to attribute much weight to it.

22. As to the sales referred to by Mr Jeffries', Mr Thomas said that they were not comparable mainly because they were 2 storey houses. I accept that Ashley House bore little direct similarity to the subject property in terms of appearance and layout, but in valuing Longacres bungalow, and its one third acre plot as an exclusive unit (rather than as part of a larger area including the buildings and paddock), it is of considerable assistance in helping to establish a range of values for residential units with large plots in the general area at, or around, the valuation date. Ashley House was certainly larger and was in a much quieter location than the subject property, and I accept Mr Jeffries' evidence that it was well appointed. In my view, if that property was worth £290,000 at the valuation date, I can see no justification for attributing, as Mr Thomas has done, another £60,000 for Longacres bungalow. I am satisfied that the sales of Croft Cottage and New Buildings Farm also support Mr Jeffries' views and, in relation to the latter, indicates to me that, if anything, he may have been generous in his valuation of Longacres bungalow. I therefore determine the value of Longacres bungalow with 0.387 acre plot, at **£275,000**.



23. The claimants assessed the area of the triangular paddock adjacent to, and to the south side of the bungalow and garden at 4,350 sq m (1.07 acres). It had a frontage to the A460 and, Mr Thomas said, it had always had a separate access from the drive leading to the bungalow. It was, therefore, worth significantly more than the £6,500 per acre that had been agreed for plots 12/313a and b, particularly as planning consent had been achieved in 1949 for market garden and poultry breeding use. He produced details of the sale of a 3.83 acre paddock at Standek Farm, Wolverhampton Road, Cheslyn Hay in September 2004 for £61,000, which equated to just under £16,000 per acre. That land was very close to the subject property, also had direct road frontage and had been acquired by travellers who had thence used it for parking caravans. Planning consent was subsequently obtained for 6 travellers' caravan pitches. The subject land thus had a value of £16,000 to which £4,700 should be added to represent the value of the planning consent, giving a total of £20,700. In cross-examination, Mr Thomas accepted that the planning consent had never actually been taken up, and that there was no evidence of the land having been put to such uses. In response to a question from me, he admitted that the former access into what is now described as this separate paddock area was further along the road, to the south, rather than within the section of road boundary that has now been taken. He said that, it did not matter, for these purposes where the access actually was, as it had separate access when the land was taken and, in any event, access could be provided off what would have been the existing Longacres' drive, without devaluing the bungalow.

24. Mr Jeffries calculated the area of this paddock and parcels 12/313a and b at a total of 4,490 sq m (1.1 acres). The area of the two small parcels had been agreed at 1,145 sq m (0.28 acres) which left 3,345 sq m (0.83 acres) for the paddock. At £6,500 per acre, this gave a value of £5,395. He explained that the reason for the difference between his area and the claimants' assessment was due to the fact the land actually taken for the scheme was less than had been anticipated, and than had been shown on the original CPO plan. In reality, the new fence forming the southern boundary of the triangular area that was the paddock, bungalow, and farm buildings, which had been constructed with "kinks" in it so as to miss out a septic tank and a drain cover, had been built in that location to assist the claimants. They were, he said, at the time the land was acquired, planning to construct a large new agricultural building, and it would have encroached onto the boundary line or would have had to be moved, if the original CPO line had been followed.

25. Mr Jeffries said that the land had no additional value due to its proximity to the road as, if it was being valued separately from the bungalow, it would have had no access. Also, the planning consent, even if it were still extant (which was doubtful), would not, in his view, increase the value. The paddock sale referred to by Mr Thomas, he said, was 4 years after the valuation date, by which time values had increased generally as a particular result of the opening of the M6 Toll.

## Conclusion

26. A considerable amount of time was taken at the hearing dealing with the question of disputed areas, and it became clear to me that the claimants were having some difficulty coming to terms with the fact that less land was actually taken than was originally anticipated. The fact is that the small strip of land in apparent dispute remains with the claimants, and although the Highways Agency have offered to move the fence to the former CPO line, that would create, it seems to me, serious problems with gaining access to the side of the, now constructed, new building for maintenance and decoration purposes. In my judgment such an exercise would be utterly pointless, would involve the acquiring authority in considerable and unnecessary expense, and would achieve nothing material in terms of value for the claimants. As Mr Jeffries pointed out, when looking at the broad picture relating to the claim as a whole, any apparent loss (if indeed there is one) to the claimants is more than compensated for by increased offers that have been made on some of the other heads of claim in efforts to negotiate settlement.

27. For the purposes of determining the compensation due under this head, I take the area of this section of paddock to be 0.83 acres, as calculated by Mr Jeffries. However, I do not agree with him that if the planning consent were still extant, it would not create any additional value because, in part, there is no separate access. Although it was not tested in the evidence, or pursued at the hearing, it seems to me that if a compensating authority sever a piece of land that formerly had access as part of a compulsory acquisition, it can hardly argue that the land which is being valued must be reduced in value to reflect the fact that the access was not on the part of the land that was actually taken. However, this is of no real import because, in reality, as the claimants said, they could get access over the original bungalow drive. The fact that, for the purposes of assessing the value of the various claim heads, the paddock and the bungalow have been “lotted” separately, does not mean that there would not be an opportunity, for instance, for the bungalow owners to grant an easement giving the requisite access, for the precise purpose of increasing the value of the paddock land. In my view, that would not detract materially from the value of the bungalow and its garden.

28. For the reasons to which I shall now turn, whilst I conclude that the land should be valued as though it had access, I do agree with Mr Jeffries that the planning consent referred to adds nothing to the equation. In the present case, there is no evidence, Mr Thomann said, that the permission was ever implemented or, indeed, that it survived the later, implemented, planning permission for the bungalow. I agree with that submission, and conclude that whether or not planning consent for a market garden and poultry breeding unit added value to the land, it could not, in my view, now be implemented. Nevertheless, I have to conclude that the value of just under one acre of roadside land with, as I have said, access or the opportunity to provide it, must be worth more than the value attributed to plots 12/313 a & b. The comparable paddock sale produced by Mr Thomas is, I think, useful, and although it was some 4 years after the valuation date, I am not aware of any evidence that movement in market values in agricultural land was anything like as much as that affecting the housing market during the same period. Although it is conceivable that the price achieved for the 3.83 acre paddock at Cheslyn Hay was inflated due to the requirements of the purchaser, there is nothing to say that the same would not apply here. Doing the best that I can, I calculate that the claimants’ paddock would be worth no less than £12,000 per acre (reflecting some allowance for time inflation and the fact it fronts a very busy road), and therefore assess the compensation at £9,960 – say **£10,000**.

29. The area of Building 4, which had lined walls and roof cladding and 3-phase electricity, but no separate wc facilities, and had the benefit of a Certificate of Lawful Use under section 191 of the Town and Country Planning act 1990 (as amended), was agreed during the hearing to be 120 sq m. Mr Thomas, whilst accepting the precise wording of the certificate to be less wide than full industrial use, said that to all intents and purposes it was equivalent to a full permission. The certificate did not prevent the building being utilised for all the purposes that their business required. He produced details of 4 allegedly comparable local workshop units which gave rental values averaging £5.78 per sq ft (£53.70 per sq m), together with an advertisement for a “small industrial unit” at Graislely Row, Wolverhampton that had an area of 88.7 sq m and a rent payable of £5,500 pa where the asking price for the freehold was £75,000 - £845 per sq m. Another industrial unit of 93 sq m for which the asking price was also £75,000 equated to £806 per sq m and another on an industrial estate in Stafford equated to £1,176 per sq m. Mr Thomas said that his valuation of £50,000 for his own unit, which equated to £416 per sq m was roughly half that apparent from the comparables, and that reflected the differences between a unit on a farm, and one on a formal industrial estate. He did not accept that his own unit, located in a rural position with a lack of good access and modern facilities, would suffer a severely restricted market, and he thought his discount was quite sufficient to reflect any differences,

30. Mr Jeffries valued the workshop building (and the other buildings) on the basis of a comparable at Port Lane Farm, Abbots Bromley, which, had been sold by auction for £300,000 in April 1998. That property had 55 acres of land, buildings and a milk quota and milking equipment, but no farmhouse. He broke down the value of the individual elements which left, for the buildings, a capital value of £57.38 per sq m that, in the case of the workshop, produced £6,886. He then added a rental value of £1.50 per sq ft (1,292 sq ft) to reflect the value of the certificate, giving a figure of £1,936.50 pa, which he then multiplied by a YP of 8 to give an additional capital value of £15,492. The total value thus became £22,378, which equated to £186.48 per sq m. This, he said, was 3 times the broken-down value of the Port Lane Farm buildings, and more than adequately accounted for any additional value created by the restricted certificate.

## **Conclusion**

31. Not only was Mr Jeffries analysis very confusing, moving as it did between square metres and square feet, but in my judgment, his reasoning was also flawed. His arrival at a basic capital value for the buildings at £57.38 per sq m resulted from an analysis of all the other components of the sale of Port Lane Farm, an approach which appeared to me to be subjective in the extreme. To conclude that, “what is left over” can be attributed to the buildings without stepping back to see whether the resulting figures stand up to scrutiny indicates an approach which I find to be singularly unhelpful. The error is clear when analysing the basic capital value against the result of applying an additional rental value and capitalising that. That produced an additional £15,492 which is some two and a half times the basic value. In my view, that cannot be right.

32. Whilst I accept the acquiring authority’s protestations about the comparability of units on industrial estates, against a building located on a rural farm in the midst of a range of other agricultural buildings, and the fact that the certificate is not equivalent to a full planning permission, I am mindful that Mr Thomas discounted the comparables by over 50% to reflect this. In my view, the disabilities associated with the workshop building do reduce the value in comparison with other industrial units by somewhat more than the claimants have proposed. Doing the best that I can on this issue, therefore, I determine the enhanced value of the workshop building at £300 per sq m, which equates to **£36,000**.

*Claim item 2.5                      Agricultural buildings*

33. The overall areas for these (excluding the workshop dealt with above) have been agreed at 487.125 sq m. That measurement does not reflect the element of discount applied for those that are open sided or of inferior quality, as argued by Mr Jeffries. Mr Thomas referred to buildings 12 and 13 which extended to 128 sq m and which had been acquired by the Highways Agency in a separate negotiation at a price of £15,000. This equated to £117.1875 per sq m. Simply multiplying this figure by the now agreed area of the remaining buildings produced a value of £57,377. He had not discounted the price per sq m on any of the buildings to reflect that, for instance, some were open sided, and one was a former nissen hut, although he acknowledged in cross-examination that Mr Jeffries “had been entitled to do that”.

34. Mr Jeffries’ valuation was based upon the £57.38 per sq m referred to in connection with the workshop, but he had made adjustments to reflect the quality and disadvantages of certain buildings thus:

Building 1 & 2	67.00 sq m @ 100%	67.00
Building 3	48.5 sq m @ 50%	24.25
Building 5	195.5 sq m @ 100%	195.50
Building 6 (Nissen hut)	57.75 sq m @ 50%	28.87
Building 15	11.25 sq m @ 75%	8.43
Building 14/13	99 sq m @ 75%	<u>74.25</u>
		398.30

During the hearing, in an effort to get areas agreed, Mr Jeffries said he would accept a further 7.5 sq m at full rate. This gave an equivalent of 405.8 sq m, which at £57.38 per sq m produced a capital value of £23,285.

35. Mr Jeffries said that he did not accept that the price paid for buildings 12/13 represented the open market value. He explained that it had transpired that the “cut line” for the new road dissected these buildings, which made their retention unviable. Their demolition was therefore essential and, he said, Mr Thomas was aware of this. The claimants had refused to allow the Highways Agency access until a suitable figure had been agreed, and the price paid was thus subject to an element of ransom. He said that estimates for the cost of constructing a new building (which would have been infinitely better than what was there previously), had been

obtained in the sum of £82.70 per sq m. The figure of £117.1875 was, therefore, more than reasonable at 40% more than the cost of a new building.

## **Conclusion**

36. I have already indicated that I am not satisfied that Mr Jeffries' analysis of £57.38 is soundly based. However, the cost of constructing a new building which I accept would have been to a much better standard than the old, open fronted and part barrel roofed units that were previously there must form a reasonable base for making the assessment. Nevertheless, there would undoubtedly be other costs involved, including supervision/project management and the like, and there would have been the temporary loss of use factor to be taken into account also. It is also a fact that, whilst costs of reinstatement might give some assistance, in valuation terms cost of construction and market value are entirely separate.

37. Having said all that, I do accept from Mr Jeffries' evidence (and this was also apparent from the photographs provided by Mr Thomas), that the buildings were not particularly good and it is entirely appropriate to apply discounts for individual disabilities. In the light of the evidence relating to these buildings and the workshop, and accepting there may well have been some ransom value in the price agreed for buildings 12/13, I conclude that an appropriate figure would be £100 per sq m, and this should be applied to the adjusted figure produced by Mr Jeffries (405.8 sq m), to give £40,580 – say **£40,500**.

## ***DISTURBANCE***

### *Claim item 4.1                      Loss on forced sale of cattle*

38. Mr Thomas explained that it had been necessary to sell the whole of their herd of 110 cattle, due to the fact that all the buildings were to be demolished, and his particular type of cattle were continental varieties that could not be wintered outside. Following a meeting on site on 4 October 2000 between the claimants and the acquiring authority, a joint letter of instruction was sent to Halls Auctioneers on 10 October 2000, and Roger Sadler FRICS valued the cattle at £52,515, this being confirmed in a letter of 17 October 2000. That letter included a statement to the effect that the valuation was to be based upon the best price that an owner could expect to achieve if the stock was sold in the spring, when the market was at its strongest, and that such prices would not be achieved if the stock was sold immediately, when the market was at its most depressed. The £26,290 that was being claimed thus represented the loss that had been made against the valuation figure when the cattle were sold at market in October and November 2000.

39. A without prejudice offer had been made by Mr Jeffries in the sum of £20,832 (in 2006) but this was rejected. Subsequently, the offer was withdrawn after Mr Jeffries had asked for copies of the farm's accounts, which showed the value of the cattle in the books at the relevant time, as £27,148. The offer was therefore revised to £557 being the difference between the price achieved, and the book value shown. Mr Thomas said that it took 6 weeks from the date Halls' valuation was received for Mr Jeffries to raise queries as to its basis, and during that

time the vast majority of the cattle had been sold. He did not accept the argument that he had had since 1999 to arrange for the livestock to be sold, and that any loss that he may have incurred was due to him having left the sale until the last minute. He said that the claim based upon spring prices was his compensation for having to sell the stock in the dead of winter, to accommodate the Highways Agency. The Agency, he said, had initially offered to provide him with a replacement building, but that did not come to fruition. Also, due to the fact that it was necessary to obtain planning consent for a new building, there had not been time for him to make the necessary arrangements before the land was actually taken.

40. Mr Jeffries pointed out that historically it must have been the case that the stock were out wintered, as there was only one building (No 5) capable of housing animals, the rest being used for machinery and fodder. At the time of his November 2000 inspection, building 5 had contained young stock only. He also said that the initial reason given by Mr Thomas for needing to sell the cattle was because it was anticipated he would have to move off the farm, and would not be able to look after them. Any such concerns were overcome when arrangements were made for the Thomas's to remain in temporary accommodation on the farm whilst their new bungalow was being built, and in any event, he said, it was his view that the animals could have stayed outside over the winter months because they were of the longhaired variety. As to the Halls valuation, Mr Jeffries said that the letter seeking a report had been a joint instruction (agreed with the claimants' then agent, BK Consultants) which set out the required basis as:

“1. An opinion of the best price at which a sale of the item would have been made unconditionally for cash consideration at the date of valuation assuming:

- a. A willing seller
- b. That, prior to the date of valuation, there had been a reasonable period for the proper marketing of the item or in the case of livestock, if presented at a livestock market there was no flooding of the market by other animals in Mr Thomas's ownership
- c. That no account is taken of any additional bid by a prospective purchaser with a special interest
- d. That both parties to the transaction had acted knowledgeably, prudently, and without compulsion”

The comment at the end of the valuation regarding spring values alerted him to the fact that Mr Sadler might not have complied with the valuation instruction, and confirmation that it was anticipated spring prices that were given was received by telephone from Mr Sadler on 20 October. Mr Jeffries went on to say that, on 23 October, he agreed with Mr Robinson of BK that the valuation had not been produced on the basis requested, and that adjustment could be made to reflect current levels of value. In the letter of that date confirming his concerns, Mr Jeffries said that he also sought copies of the audited accounts and copies of the stock movement books, the former not being produced until 2004, and the latter not until just before the hearing. He admitted that he had not sought written confirmation of Hall's basis of valuation until 27 November 2000.

41. Mr Jeffries explained that the purpose of the instruction to value the stock was to enable the acquiring authority to put the claimant in the same financial position that he would have

been had the scheme not occurred: that was the difference between the price actually achieved on forced sale, and what the cattle were actually worth. The reason why Hall's valuation was not immediately rejected was because Mr Robinson had suggested that the figures could be adjusted and, in any event, it was not until nearly 4 years later that he (Mr Jeffries) became aware of the value attributed to the livestock in the accounts. It was a fact, he said, that the prices achieved were extremely close to their stated book value, which was an indication that Hall's valuation was clearly overstated. If he had known about the figures shown in the accounts when the information had been sought, Mr Jeffries said that the without prejudice offer (which reflected a reduction to account for feed and other expenses saved), would probably not have been made. However, it had not been withdrawn sooner because of their attempts to get the claim settled by negotiation. As it was, the offer was not withdrawn until December 2006.

42. In response to Mr Thomas's criticism that it had taken 6 weeks for him to seek written confirmation from Halls, Mr Jeffries said that he had, in fact, written to the claimants' agent expressing his concerns on 23 October, within days of the valuation being received, and it was unfortunate that BK had not passed that information on to him. In his supplementary report, Mr Jeffries said:

“Although I can understand that ‘young beef’ cattle will make a premium in the spring as grassland farmers purchase them for fattening on grass, this premium does not apply to calves and cows. Mr Sadler has however valued all the animals on a ‘spring grass premium’ basis, which in my view is incorrect”

It was submitted that by not selling his livestock at the appropriate time of year, if indeed it was necessary to do so at all, the claimants had failed to mitigate their losses.

## **Conclusion**

43. It was abundantly clear to me that, upon this issue in particular, the parties had become seriously entrenched, and although there initially may have been, on the authority's part, some flexibility in terms of their assessment of the compensation, that was certainly not apparent at the hearing. Mr Jeffries was, of course, correct to state that it was the acquiring authority's intention to put the claimants back into the [financial] position they would have been, had it not been for the scheme – the “principle of equivalence”, but I cannot accept his argument that compensation should be the difference between the price achieved, and the stated book value. Although the entry in the accounts refers to “livestock at valuation - £27,148”, there is no evidence that the cattle were valued immediately prior to the end of the financial year in 2000 or, for that matter, in any other year. Values may, for instance, have been written down, similar to the way vehicles, fixtures and fittings or other capital items are normally treated in the books. In my judgment, the compensation must reflect the difference between the price that was achieved (and which, from the evidence, was undoubtedly a forced sale value), and what a professional valuer thought would have been the price that the vendor could expect to receive, in accordance with the assumptions set out in para 40 above. Those assumptions were designed precisely to prevent the claimants suffering any loss that may be attributable to the scheme, and would cover any reduction caused by selling at the wrong time of year.

44. However, on the question of mitigation, I do need to take some account of Mr Jeffries argument that the claimants could have disposed of the stock in the spring of 2000, which was after the notice to treat, but prior to the notice of entry. If there was, indeed, a large difference between the winter sale and spring sale values, then that argument would carry some weight, as I believe the claimants were somewhat lax in not moving things on earlier. Unfortunately, Mr Sadler does not appear to have been asked, when Mr Jeffries queried his valuation, to produce an alternative figure on the assumption that all the stock were to be sold in October/November. All that appears to have occurred is that he and Mr Richardson of BK agreed (presumably without the claimants' express authority), that there could be some adjustments. Having rejected Mr Jeffries' reliance on the stated book value, and being of the view that it would be most unlikely the difference in value between the right and wrong times of year could be as much as 50% (which is what it would be comparing Mr Sadler's valuation with the book value), I consider the fairest result is to effectively reinstate the offer that was withdrawn in 2006, and determine compensation under this head at £20,000. The £6,290 difference between this and the sum claimed is, in my view, a reasonable allowance to reflect the claimants' possible failure to mitigate and the perfectly reasonable claim by the authority that some savings in feed, vets bills and the like would be made. Finally, on this issue, I reject Mr Jeffries suggestion that the buildings were not suited to over wintering more than a few head of stock and his suggestion that in his view the animals were a type of breed that could remain outside. He is not a farmer, whereas the claimants are, and I accept what they said on this point. Furthermore, the photographs clearly indicated to me that the buildings were of sufficient size, and it seems to me quite reasonable to expect that items and equipment stored in them would be moved to allow the cattle access during the short periods that they would actually need to be inside. Compensation under this head is therefore determined at **£20,000**.

*Claim item 4.2                      Loss on forced sale of fodder.*

45. The circumstances of this part of the claim are similar to the cattle issue. Halls undertook a valuation of the hay and silage at the same time, although their inspection failed to note, and price, a number of small bales. Mr Thomas, on the basis of Hall's valuation and his own estimate of the value of the small bales, produced a total value of £21,234. Mr Jeffries accepted Hall's figure, but assessed the value of the small bales at slightly less than Mr Thomas (50p per bale rather than 60p), and came to a figure of £20,384.

46. It was suggested to the claimants' then agent that they should be asked to advertise the fodder locally or obtain quotes from respectable straw dealers. In the event, the claimants sold the whole of the fodder, once the cattle had been sold, to a local farmer who they knew at a price of £6,330 resulting in a claimed loss of £14,904. Mr Jeffries' said that his initial offer, which had followed Mr Robinson's suggestion of adjusting Hall's spring valuation of the cattle back to an October/November figure, was achieved by offsetting what the cattle would have eaten during this hypothetical period, and making appropriate adjustments. The offer, which was linked with the original offer relating to the cattle, was likewise withdrawn in December 2006. In respect of this reference, Mr Jeffries said that he now accepted that it was appropriate to value the whole of the fodder on a forced sale basis and had consulted the internet site of the British Hay and Straw Merchants Association which gave market prices for the relevant time. This produced a value of £13,362 which was a reduction from Hall's figure (£20,384) of £7,122 which was the compensation now being offered.



## Conclusion

47. I am satisfied in the circumstances of this case that it was reasonable for the claimants to sell the fodder to a neighbour, and am not convinced that had it been advertised locally, it would necessarily have achieved precisely the figures quoted by the Association. It is a fact of life that when anything needs to be sold quickly (in forced sale circumstances) achieved prices rarely match those quoted. Nevertheless, the fact remains that the claimants did not market the fodder either by advertising or offering to dealers, and there is therefore some suggestion that they did not do all they could to mitigate the loss. I therefore deduct 25% from the sum claimed to reflect this, which leaves compensation in the sum of £11,178 – say **£11,000**.

*Claim item 4.9a*

*Additional track*

48. A claim for a section of track to the claimants' temporary accommodation was accepted by the acquiring authority, but a further claim in the sum of £5,100 for an additional section of track was disputed by them on the grounds that it represented a "value for money" item in connection with the rebuilding of the former bungalow elsewhere on the holding. It was considered by Mr Jeffries to be too remote, and not a reasonable consequence of the owners' dispossession – see *Harvey v Crawley Development Corporation* (1957) 1 QB 485 and *Service Welding Limited v Tyne and Wear County Council* (1979) 38 P&CR 352.

49. Mr Thomas explained that it was nothing to do with the construction of the new bungalow, or the new agricultural building. It was a temporary track (which has since been removed) to access the remaining building because the works had severed the main access. It was also needed in connection with the removal of the fodder, and the daily servicing and maintenance of farm equipment.

## Conclusion

50. This seems to me to be an entirely reasonable claim, and I accept it. Compensation under this head is therefore determined at **£5,100**.

*Claim item 4.13*

*Temporary electricity supply*

51. The acquiring authority agreed to provide a new electricity supply to the mobile home and its immediately adjacent sheds in the circumstances, despite it really being, as Mr Jeffries said, a value for money item. He assessed the value of this at £1,500. The claimants said that it was also necessary to continue that new supply to service the remaining building (no 7) as the supply had been severed. This was not a new building, but one of the original ones that remained, and the total cost (including connection to the mobile home) was £8,450.

## Conclusion

52. I accept the claimants' evidence, and agree that the reinstatement of a severed supply to one of the existing buildings is an item for which compensation should be paid. It is determined in the sum of **£8,450**.

### *Claim item 4.17      Mobile home*

53. The claimants claimed £6,000 under this head, in respect of the mobile home they acquired to occupy whilst the replacement bungalow was being constructed. Mr Thomas said that it had been agreed between his former agents and the acquiring authority that "the limit of the purchase price was £6,000, equivalent to 12 months rental value [of alternative accommodation]. No other stipulations were made for acquiring the caravan." On 4 April 2006, Mr Thomas wrote to a Mr Skirving at the District Valuer's office in an effort to get this, and other elements of the claim agreed, and reminded him that although the authority had, in 2004, offered £3,000 as a 50% contribution to the cost of the caravan, this had subsequently been withdrawn, and that no offer was now being made. He acknowledged, in that letter, "the Highways [Agency] promised to pay the loss on the rental accommodation when it was sold" and that "no time limit was stipulated...." He said that his agent had advised the Agency, in December 2004, that nobody was interested in the caravan, and that they were welcome to take it away to recover what money they could.

54. Mr Thomas said that he wrote to Mr Skirving again on 10 May 2006 reminding him that he had said, in a letter of 11 April 2006 that "the offer has always been that the compensation would cover the use of the mobile home (by compensating for its loss in value) for a reasonable period." He queried what a reasonable period was considered to be in the light of the fact that planning consent for the new bungalow was only obtained when they moved out of the original Longacres bungalow, and 12 months was, of course, insufficient. He also said that he had had no success in selling the caravan, despite advertising it locally.

55. Mr Jeffries said that no commitment had ever been made in connection with funding the outright purchase of the mobile home, but that he had agreed with Mr Robinson of BK that if such temporary accommodation was purchased, the loss of value would be compensated on the basis of a reasonable period of occupation, envisaged to be 18 months maximum. Whilst the Agency had no obligation to compensate for temporary accommodation, and it was a fact that no efforts had been made to find alternative accommodation until the very last minute, despite notice to treat having been served early, in December 1999, the offer of £3,000 had been made on a 'without prejudice' basis in an attempt to facilitate the claimants' timely removal from Longacres bungalow. That offer represented the loss in value for the envisaged reasonable period, but it was rejected by the claimants and was withdrawn, as he had made no attempt to sell the unit. Even if it were sold now, the loss, he said, would be significantly greater than if it had been sold after 18 months.

## Conclusion

56. It does seem to me that this is another example of the parties having reached an impasse, and on the strength of the evidence is a matter that should, clearly, have been capable of settlement by negotiation. Mr Thomas seems to have got it into his head that the minimum to which he is entitled is £6,000 on the basis of early conversations and alleged agreements, and it has not assisted me that none of the earliest correspondence with the claimants' former surveyors was produced. Mr Thomas has acknowledged, in later correspondence, that compensation should be based upon loss in value, however it is a fact that the unit has not been sold, so it is not possible to define precisely what the loss may be. Although Mr Thomas did produce evidence of attempts to sell the caravan, they appear fairly half-hearted, and he cannot, by any stretch of the imagination, expect the acquiring authority to pay 100% of the cost of acquisition in these circumstances.

57. In my view, the acquiring authority was entirely reasonable in making a without prejudice offer of 50% of the cost, in its initial efforts to get the matter settled and I think it should have been accepted. It is a shame that the offer was subsequently withdrawn, but strictly speaking, Mr Jeffries is correct in saying that no loss can be proven. However, it appears that he did initially acknowledge that compensation should be paid and, in all the circumstances, the fairest solution, in my judgment, is to accept the authority's earlier assessment and determine compensation at **£3,000**.

### *Claim item 4.22*

### *Replacement fences*

58. The sum of £2,060 was claimed for the provision of 400m fencing, gates and a sheep catching race in connection with the adaptation of the remaining farm premises. Mr Thomas quoted from *Harvey v Crawley* where Romer LJ said, at 494:

“It seems to me that the authorities to which our attention was drawn do establish that any loss sustained by a dispossessed owner (at all events one who occupies his house) which flows from a compulsory acquisition may properly be regarded as the subject of compensation for disturbance, provided, first, that it is not too remote and, secondly, that it is the natural and reasonable consequence of the dispossession of the owner.”

He said that Mr Jeffries had failed to record their existence on the land taken, and they had not therefore been included within the price of the land. These were not new works in connection with the rebuilding of the bungalow, but were necessary for the adaptation of the retained land following dispossession from part of the holding.

59. Mr Jeffries said that he had not noted the items on the land before it was taken, and simply held that the works were part of the redevelopment process and thus constituted ‘value for money’.

## Conclusion

60. Mr Thomas pointed out to me, on the site inspection, the stretch of fencing that he had had to erect. This part of the claim is, in my view, acceptable but in respect of the sheep pens, I am not satisfied that they were a direct replacement of facilities lost to the scheme, and in that respect Mr Jeffries' argument must prevail. From the personal invoice that Mr Thomas provided, it was evident that the cost of the fencing was £800 to which should be added a proportion of his labour charge for erecting it. I assess this at £200 of the £500 claimed for labour, making a total under this head of **£1,000**.

*Claim item 4.22a*

*Loss of trees*

61. The claimants said that two mature sycamore trees on the boundary were lost to the scheme, whereas they could have been retained. A number of fruit trees were also lost, and their replacement was being claimed, as was the need to plant a new hawthorn hedge along the newly fenced boundary, that work not having been done by the acquiring authority. In all, £1,600 was claimed under this head. Mr Jeffries said that the value of trees and hedgerows is normally incorporated within the value ascribed to, and paid for, the land. To pay this claim would represent double counting.

## Conclusion

62. I agree with Mr Jeffries on this point, and determine that the compensation under this head shall be nil.

*Claim items 4.23, 4.24 and 4.25a*

*Damage by contractors and items removed*

63. A sum of £3,155 was claimed in respect of items damaged by the Agency's contractors during relocation from the original Longacres bungalow, together with £2,100 for items that had been left behind and removed (and for the collection of which the security team had refused access), and £200 for damage to a greenhouse by the contractors' personnel. Mr Thomas said that he had obtained Mr Jeffries' agreement that these were legitimate items of claim but he had subsequently refused compensation on the grounds that any claim must be against the contractors.

64. Mr Jeffries said that whilst he had initially accepted that some, at least, of the items referred to were legitimate, he was of the view that any claim was against the contractor in respect of damage. It was also submitted by Mr Thomann that, per *Compulsory Purchase and Compensation (8<sup>th</sup> edn)* (Denyer-Green), if the claimants were able to prove that any damage was caused by the carelessness of the contractors, he must look to them for compensation. As to the items removed, Mr Jeffries said that the claimants had had ample time to remove them prior to entry being taken, and the case in respect of the damage to the greenhouse would again be against the contractor.

## Conclusion

65. Mr Thomann is, in my view, correct, and if a contractor caused damage to land alongside the works, the claimant must look to that contractor for recompense under the ordinary law of nuisance or trespass to land. However, I note that the damaged roofing sheets (which Mr Jeffries initially accepted) had been moved from the retained land onto the CPO land by the contractor to enable it to have access for its works. This part of the damage claim therefore succeeds in my view (amounting to £1,200). As to the removed items, I accept Mr Jeffries' evidence in this regard, as I do in relation to the greenhouse. The total compensation thus awarded under these heads is **£1,200**.

*Claim item 4.28*

*Claimants' time associated with removal*

66. Mr Thomas said that whilst he accepted that the claimants had been compensated for the loss of profits from the farming business and for casual labour in respect of the vacation of the business premises, he had not been compensated for his necessary involvement with the vacation of the residential unit, and supervision of casual labour throughout the move. In this respect the claim was for 425 hours at £15 per hour totalling £6,300. Mr Jeffries said that he claimants had already been compensated for loss of profits and estimated earnings, and this item would amount to double counting.

## Conclusion

67. I do not accept that the claimant's involvement with the removal and supervision is a matter that is covered under the loss of profits claim. However, the time claimed does seem to me to be excessive. I think that 200 hours at £15 per hour would be reasonable, and this final element of the claim is therefore determined at **£3,000**.

## Summary

68. The compensation determined can be summarised as follows:

Items agreed prior to and during the hearing		£ 89,979.96
Claim item 2.1	Longacres bungalow & garden	£275,000.00
Claim item 2.2	Paddock	£ 10,000.00
Claim item 2.4	Workshop	£ 36,000.00
Claim item 2.5	Agricultural buildings	£ 40,500.00
Claim item 4.1	Loss on cattle	£ 20,000.00
Claim item 4.2	Loss on fodder	£ 11,000.00
Claim item 4.9a	Additional track	£ 5,100.00
Claim item 4.13	Temporary electricity supply	£ 8,450.00

Claim item 4.17	Mobile home	£ 3,000.00
Claim item 4.22	Fences	£ 1,000.00
Claim item 4.22a	Trees	£ NIL
Claim items 4.23 etc	Damage	£ 1,200.00
Claim item 4.28	Time	<u>£ 3,000.00</u>
		£504,229.76

Say, £505,000.

69. This concludes my determination of the issues in respect of this reference, and compensation shall therefore be paid by acquiring authority to the claimants in the sum of £505,000 for the compulsory acquisition of part of Longacres, Shareshill, Staffs. The parties are now invited to make submissions on costs and a letter relating to this accompanies this decision, which will only become final when that question has been determined.

Dated 2 May 2008

P R Francis FRICS