Development Disputes

Current issues for property litigators

Problems in land valuation

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The legal aspects of land valuation are something which permeate property law. Many disputes are concerned ultimately with the valuation of interests in property and few property lawyers are immune from having to deal with such problems. The problems can arise in a variety of situations such as rent reviews under leases, the operation of options to acquire property, the compulsory purchase of property, rating and the valuation of property for taxation purposes such as inheritance tax or capital gains tax. Of course the primary input to such disputes may well be that of surveyors and valuers. Nonetheless it is surprising how often matters of law and principle arise and how often there is confusion as to basic principles.

The aim of this article is not to provide an overall survey of the law of property valuation but to concentrate on two areas. The first area is the admission in evidence in a valuation dispute of events which have occurred after the valuation date. This is a matter of general importance to property valuation and is a matter on which, despite the confusion which sometimes exists, in law a clear and decisive answer, together with a single well defined exception to the general answer, can be given. The second area to be considered is two aspects of the law of the assessment of compensation for the compulsory purchase of land, both of which are dependent on very recent new developments in the law, a decision of the House of Lords in 2009 and provisions which were introduced by the Localism Act 2011 and came into effect on 6 April 2012.

Events after the valuation date

The ascertainment of the valuation date in any property valuation dispute is critical. It is a matter of common sense to say that one cannot rationally value property unless one knows the valuation date. The reason is that property values can fluctuate quite rapidly over even short periods of time and, unless the value is anchored to a specific date, it becomes meaningless to state what is the value at any rate in any precise terms. The ascertainment of the valuation date is not usually difficult. For example, in nearly all rent review clauses the valuation date is the rent review date or the date from which the reviewed rent becomes payable. A well-drafted option to acquire development land will identify the valuation date. In cases of statutory valuations the statute nearly always specifies the valuation date.[1]

One consequence of the need for a definite valuation date is that it is very difficult to produce a valuation of land in advance of the valuation date. It is rare that when matters come to a court or an arbitrator such a process could be required. The possible difficulty is met in the case of valuation for compulsory purchase in that if the valuation has to be carried out by the Lands Chamber of the Upper Tribunal (the Lands Tribunal) prior to the normal valuation date of the date of entry onto the land then the valuation date becomes not the date of entry but the final day of any hearing before the Tribunal.

The question which arises for consideration in this article is whether, and if so in what circumstances, events which have occurred after the valuation date may be taken into account in the valuation process. The general principle is undoubtedly that post-valuation date events may not be taken into account. The reason for this principle is a simple and logical reason and depends upon the nature of the valuation process. A valuation is nearly always carried out by imagining a hypothetical transaction

1 An exception was the law of compensation for compulsory purchase in which the statutes which constitute the compensation code did not state a specific valuation date and it was left to the courts to determine that the valuation date was the date of actual entry onto the land by the acquiring authority (see *West Midland Baptist Trust v. Birmingham Corporation* [1970] AC 874). That deficiency has now been remedied by s.5A of the Land Compensation Act 1961, introduced by the Planning and Compensation Act 2001, in which the valuation date was generally confirmed as the first date on which the acquiring authority enter into any of the land acquired, sometimes called the date of expropriation.

relating to the land, a sale or a lease of it, at the valuation date and asking, with the assistance of factual and expert evidence if necessary, what amount a person would pay to acquire the land or the specified interest in the land at that date. It is a matter of common sense that those who higgle in the hypothetical market ("*happy hypothetical higglers*" as once described by Donaldson J) can only have done so on the basis of those facts which they knew. Sellers and purchasers of property, hypothetical or real, and those who advise them are not time travellers and are not prophets and they cannot know that which has not happened at the time of their assumed transaction.

A good illustration of the reasoning which underpins this general principle is the decision of the House of Lords in *Lynall v Inland Revenue Commissioners*[2] in which a valuation was carried out for estate duty purposes of shares in a private company. What had to be determined was the amount which the shares *"would fetch if sold on the open market at the time of the death of the deceased"*. At the valuation date there were proposals for a public flotation of the shares of the company but this was confidential and known to the directors of the company but was not generally known in the market. The shares would have been worth £4.10 each if the proposals were taken into account by the hypothetical purchaser but only £3.10 if the proposals were not taken into account. It was held that the flotation proposals could not have affected the open market value of the shares at the valuation date since, being confidential, they would not have been known to the hypothetical purchaser of the shares on that date and so could have played no part in the determination by him of the amount which he was willing to pay for the shares.

In a rent review case, *Cornwall Coast Country Club v Cardgrange Ltd*,[3] the issue was whether, in assessing the open market value of Crockford's Casino, confidential information as to the trading records of the tenant company could be taken into account even though they were not generally known in the market. Scott J, on an appeal from an arbitrator, held that such confidential accounts could not be considered for the same reasons as just explained.

The rule as so far stated is a clear rule and one simple to express. The parties to the hypothetical transaction and their valuers, and in particular the hypothetical purchaser whose bid is ultimately that which determines the valuation, can only take into account as facts that which they know. They cannot take into account as a fact or an event anything which they do not know. There are a number of reasons why in principle a hypothetical purchaser and his advisers cannot know of some fact. For example, as just indicated the facts may be confidential and known only to the owner of the property assumed to be selling it. The facts, though existing, may be known to nobody such as the existence of oil beneath the land or the discovery of minerals which occurs in the future. The important example for present purposes is that facts and events cannot be known as a certainty because they have not happened at the valuation date.

This leads to the question of anticipated events. When property is being bought the anticipation which exists in the market of relevant future events may have a powerful effect on its value. Even though the existence of valuable minerals under the ground of the site being sold may not be known as a fact their discovery may be anticipated and clearly such anticipations may significantly affect the amount which would be paid for a property. Thus an associated principle to the rule that facts not known at the valuation date cannot be taken into account is the principle that account can be taken of all those matters which would have been reasonably anticipated by persons bidding in the market at the valuation date, i.e. what in the rating case of *Dawkins (Valuation Officer) v Ash Brothers & Heaton Ltd* Lord Pearson called *"a present probability of a future happening"*.[4]

2 [1972] AC 680
3 [1987] 1 EGLR 146
4 [1969] 2 AC 366 at p399

It is obvious that the weight which will be given to an anticipation of a future event in the valuation process depends on two matters, namely (a) how important to value that future event would be if it in fact occurred and (b) how strong is the prospect that the event will occur. The future is full of surprises. It was believed for millennia that all swans were white but then Captain Cook went to Australia and found some black ones. One just cannot know what will actually happen. The process which valuers often use in dealing with situations of this kind is to discount for uncertainty. The value of the property is found as it would be if the future event were certain but then a reduction or discount is made for the uncertainty involved. This process is often carried out where the uncertainty is that of the obtaining of planning permission necessary to unlock the development value of land. A recent instance is that in the *Spirerose* litigation (referred to again in the second part of this article) the Lands Tribunal found that there was a good prospect of obtaining a particular planning permission for the land being valued in the period immediately after the valuation date but discounted the value which the land would have had if that permission had actually existed by approximately a third in order to reflect the uncertainty which is inherent in all activities of local planning authorities.

Although the principles are clear and although there is an abundance of authority in support of the principles as just stated (far more than can be considered within the ambit of this article), there seems to be a human tendency among some courts to refuse to apply the principle with the rigour which it properly demands. For example in the Lands Tribunal in *Essex County Showground Group Ltd v Essex County Council*[5] it was necessary to determine the open market value of a showground site which had been compulsorily purchased and one question was the expectation at the valuation date of obtaining a certain type of planning permission. It was concluded that an actual planning permission granted after the valuation date could be taken into account as relevant to the inquiry. The mental process involved in decisions of this sort often seems to be that because a particular event has happened after the valuation date it can be concluded that it was more likely at the valuation date that such an event would happen. Unfortunately this line of reasoning radically misses the point. What is crucial to the valuation is the views of the hypothetical parties to it and the views which they entertained as to the likelihood of some future event happening, such as the grant of a planning permission, cannot have been coloured by the fact that a permission was, or was not, subsequently granted for the simple reason that they, unlike the court or tribunal which determines the valuation question, cannot have known that that permission would or would not be granted. It is an unfortunate fact that the correct rule and simple intellectual rigour are sometimes abandoned in this way.

There is one major and genuine exception to the rule against the admissibility of post-valuation date events. That exception relates to comparable transactions which took place after the valuation date. There is in this respect a conflict of theory. On the one hand it can be said, and forcefully said, that a transaction of property other than the property being valued, which might otherwise give guidance as to the value of the property being valued, cannot be taken into account if it occurred after the valuation date since the hypothetical parties at the valuation date could no more have known about that transaction than they could have known about any other future event. On the other hand it can be said that, while acknowledging this reasoning, the fact that a transaction took place on similar property in similar circumstances shortly after the valuation date is logically as much an indication of what the parties would have been likely to have agreed on the valuation date for the property being valued as would a transaction on other property which occurred shortly before the valuation date. Of course a transaction after the valuation date on the property being valued might be cogent evidence.

5 [2006] RVR 366

In any event whatever the theoretical arguments the law has come down firmly in favour of the solution that in this instance there is an exception to the general principle so that transactions which occur after the valuation date are not prevented from being received in evidence by reason of their date. Of course their value as evidence may be affected by the distance in time between them and the valuation date. In *Segama NV v Penny Le Roy Ltd*[6] Staughton J, after an extensive review of the authorities, concluded that none of them prevented him from receiving in evidence post-valuation date comparables. There is further high authority in support of this exception in the decision of the Privy Council in *Melwood Units Pty v Commissioner of Main Roads*.[7] The Commissioner had resumed (compulsorily acquired) a strip of land for the building of an expressway towards Brisbane in Queensland. The valuation date, the date of the resumption, was 11 September 1965. The Lands Appeal Court valued the land acquired at $9,250 per acre. In June 1966 the Claimant had sold land which he had retained to the north of the strip resumed at a price of £40,000 per acre. The question was whether the Lands Appeal Court was correct to reject consideration of this transaction. The judgment of the Privy Council was delivered by Lord Russell. It was held that the subsequent transaction must be taken into account. Lord Russell said:

> *"Now it is plain that in assessing values for the purposes of compensation for resumption on compulsory acquisition a tribunal is not required to close its mind to transactions subsequent to the date of resumption: they may be relevant to a greater or lesser degree…"*

It is interesting that the possible inconsistency between a rule that matters such as confidential financial accounts are not admissible, because not available to the hypothetical parties, yet post-valuation transactions may be admissible, although suffering from the same characteristic, was advanced in argument by Mr Neuberger before Hoffmann J in *Electricity Supply Nominees Ltd v London Clubs Ltd*,[8] a rent review decision. It was not actually necessary for the Judge to decide the point since the question of post-valuation date comparables was not before him but he did not duck the point and suggested that cases which permitted evidence to be given of post-valuation date transactions might be justified on the basis of *"the presumption of continuity"*. In any event the rule now seems fairly well established that post-valuation date transactions may in principle be used in evidence in a valuation dispute.

It is convenient to get out of the way before leaving the first part of this article the old canard which is derived from the decision of the House of Lords in *Bwllfa & Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co*.[9] The confusion which has arisen from this case has mainly found its way into the valuations which are necessary for the purposes of compulsory purchase compensation but can also apply in other areas such as rating. The facts of the *Bwllfa* case were that land in South Wales contained coal which the coal owners wished to work. A waterworks company with land in the vicinity was entitled under the Waterworks Clauses Act 1847 to give notice to the coal owners requiring them to leave the coal unworked, presumably in order that the stability of a reservoir should not be threatened. The waterworks company were required to make *"full compensation"* for all damage suffered if they required that coal working should not be carried out. The compensation claimed by the coal owners was for the loss of profits which they said in the absence of the requirement of the waterworks company they would have made from working coal. The notice preventing the coal owners from working coal was given on 15 October 1898. The arbitration proceedings to determine the compensation ended on 1 February 1901. The arbitrator took into account the information which

6 [1984] 1 EGLR 109
7 [1979] AC 426
8 [1988] 2 EGLR 152
9 [1903] AC 426

was available at the time of the arbitration proceedings on increases in the price of coal up to the end of the hearing and assessed the compensation on that basis. It seems that the increase in prices, if properly taken into account, increased the compensation from £2,950 to £5,650.

The House held that it was proper for the arbitrator to take into account the knowledge available at the date of the hearing of the increase in coal prices and thus the increased amount of profits lost by reason of the inability to work the coal. The reason, as repeatedly emphasised in the speeches in the House, was that what was required was the determination of compensation for a loss and not compensation for the value of land. There was therefore no valuation date. Given these circumstances, derived from the terms of the statute, the general rule as to the assessment of common law damages had to be applied. That rule is, of course, that all events known to the court or tribunal determining the damages at the date of its determination are to be taken into account so far as relevant to the assessment of damages.

An obvious illustration of this is in actions for personal injury. The medical prognosis of the person injured may be very different at the date of the injury from what it is some years later when the assessment of damages is made by a court. Naturally the court takes into account the up to date assessment which it has before it. A vivid illustration of this common sense rule is the Australian decision of *Leschke v Jeffs*.[10] In that case the Plaintiff was injured and claimed as part of his damages a loss of expectation of future earnings. Between the date of his injury and the date when his damages were determined he was detained in prison for a period as a result of an offence committed by him following his injury. It was held that his inability to earn while detained in prison was a relevant consideration in considering the amount of earnings which he had lost due to the injury.

The problem which arises in English cases is that sometimes practitioners or even arbitrators or tribunals believe that they can consider any events which have occurred after the valuation date in assessing the value of the land by relying on what is called *"the Bwllfa principle"*. Misuse of this so-called principle is widespread. For example the President of the Lands Tribunal, Sir Douglas Frank QC, said in *Cooke v Secretary of State*[11] in a compensation case concerning betterment:

> *"In any event I do not accept the District Valuer's estimate of betterment, which was assessed as at the date of the agreement and had little regard to what actually happened. If, contrary to my decision, a deduction falls to be made under section 222 of the Act of 1959 I should apply the principles in Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd v Pontypridd Waterworks Co, and have regard to what actually happened."*

The misconception has found its way across the world. A similar reasoning, in supposed reliance on the *Bwllfa* principle, was applied by Judge Cruden in the Lands Tribunal in Hong Kong in *China Light and Power v. Commissioner of Rating*,[12] a rating case. The misconception is repeated in a book on property valuation in Hong Kong written by Judge Cruden, who was by origin a New Zealand lawyer.

It is therefore necessary to be quite clear. Where a court or tribunal has to determine for any purpose the value, capital or rental, of land at a certain valuation date there is nothing in the so-called *Bwllfa* principle which justifies the court in looking at any facts or events after the valuation date save for the exception, explained above, of post-valuation date comparables. On the other hand where a

10 [1955] Queensland Law Notes 67
11 [1974] RVR 117
12 [1994-95] CPR 618

Court or tribunal has to determine the amount of loss or compensation due to a person as a result of certain events, and that determination is not anchored by the statutory or contractual provisions to the value of land at a certain date, then it is necessary, indeed it is required, that the court or tribunal has regard to all facts and events known at the date of the assessment of the compensation or loss which are relevant to that assessment.

Compensation for compulsory purchase

The law of compensation for the compulsory acquisition of land is long, complex and, going back fundamentally as it does to an Act passed in 1845, the Lands Clauses Consolidation Act of that year (the provisions of which are repeated sometimes verbatim in later statutes), is in obvious need of general re-statement. Nonetheless we must for the moment do the best with what we have and I wish in this second part of the article to draw attention to two important aspects of the modern law which have been profoundly affected by recent developments.

(a) The Pointe Gourde principle

Lawyers, valuers, and others, concerned with advising and implementing the law of compensation have been brought up on, almost as an article of faith, the proposition that in valuing the land acquired for the purposes of assessing compensation any effect on value of the scheme behind the acquisition has to be disregarded. This is often described as the Pointe Gourde principle. The name derives from a decision of the Privy Council in 1947 in *Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendant of Crown Lands*.[13] A piece of land used as a quarry in Trinidad was acquired in order to provide stone for the construction of a naval base in the vicinity by the United States. It was held that in assessing the compensation the additional value given to the land by reason of the scheme or project of constructing the naval base, and thus by the additional demand for the stone, was to be disregarded. The expression of the Pointe Gourde principle is usually taken from a single sentence in the judgment of Lord MacDermott who said:

> *"It is well settled that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition."*

It subsequently became understood that this principle applied to a decrease as well as an increase in value due to the scheme.

The judgment of Lord MacDermott was, very unusually for the Privy Council, delivered extempore. The principle which he was stating in fact went back to Victorian cases and, though this is speculation, the reason that the principle became known as the Pointe Gourde principle may be down to (a) the fact that the decision is very short and easy to understand and (b) the catchiness of the names of the parties.

I am afraid I have to tell you (and I know this sounds like the Government announcing a further round of austerity measures but I do still have to tell you) that today, and as a result of a recent decision of the House of Lords, the Pointe Gourde principle can be virtually ignored as anything other than a rule of statutory interpretation. This may sound remarkable having regard to its background, having regard to the multitude of cases in which it has been discussed and applied in all courts, and having regard to the way it has become embedded in the hearts (and sometimes the minds) of many practitioners. Nonetheless the hard fact has to be faced.

13 [1947] AC 565

To explain what I mean I have to go back to the statutory provisions which govern this aspect of the law of compensation. The Town and Country Planning Act 1947 established as the basis of compensation in general terms the existing use value of the land. There was no compensation for land acquired in respect of a value which was attributable to the development of the land. The economic and social notions of the time were to the effect that the development value of land belonged to the community and not to the individual landowner. This principle was abolished in the 1950s when a different economic and social view prevailed and finally saw its end in the Town and Country Planning Act 1959. The opportunity was taken in that Act to restate in complex terms the principle that development, and the prospect of development, had to be left out of account in valuing the land acquired where it was attributable to certain matters and in certain areas, i.e. attributable to what broadly might be called "the scheme" of the acquiring authority. In other words the re-introduction of development value as an important component of compensation was accompanied by the statement of a complex series of provisions (now in s.6 and schedule 1 in the Land Compensation Act 1961) which put into statutory form the Pointe Gourde principle. The grammatical and syntactical nature of s.6 and the schedule are of very considerable verbal complexity and have been described by eminent Judges as being designed to postpone to the last possible moment any hope of comprehending what is meant and as exhibiting the worst features of post-War legislative drafting. Harman LJ once, with some justification and more trenchantly, described the provisions as *"a monstrous legislative morass"*. Be that as it may, they are there.

Notwithstanding this brave, if linguistically convoluted, attempt to state the Point Gourde principle in statutory form the courts for many years supposed that there was an extra-statutory Pointe Gourde principle operating in addition to and outside the confines of the statutory provisions. This additional principle was sometimes called the 'common law' principle, although in strict analytical terms it was nothing more than a gloss on the provisions in the legislation. In particular it was thought that if there was some aspect of the scheme which was not to be ignored for the purposes of valuation by reason of the various statutory provisions then one could have recourse to the common law Pointe Gourde principle and apply that in addition so as to ignore the aspect of the scheme in question. It even seems to have been supposed by the Lands Tribunal at one stage that the very language of s.6 and other provisions could be contradicted by this all-embracing common law principle. All of that has now, thankfully, been laid to rest as misconceived.

The facts of *Transport for London v Spirerose*[14] were extremely simple. A single storey, somewhat dilapidated 1950s industrial building in Shoreditch was acquired in order to build a part of a new railway. The freehold landowners said that because of the impending scheme for the railway, which had existed for seven or so years, they had been unable to obtain and implement a planning permission for a substantial new development on the site of some five storeys which would have been in part office and in part residential use. They said that in these circumstances by reason of the Pointe Gourde principle it was to be assumed that a planning permission for that development existed at the valuation date and that the land was to be valued with the benefit of that permission. There was no actual permission and there was no assumption of a planning permission under the various statutory provisions introduced in the 1959 and 1961 Acts which provided for an assumed permission in certain circumstances. The argument of the landowners was simple. They said that the reason that they did not have a permission was the scheme and that if one ignored the effect on value of the scheme then they would have had a permission and so a permission must be assumed to exist. This argument attracted the Lands Tribunal and was held to be correct. It was also held to be correct in the Court of Appeal although for somewhat different reasons which are not entirely easy to discern.

14 [2009] 1 WLR 1797

The House of Lords rejected the argument root and branch. It was held unanimously by the House that no assumption of planning permission could be made where none was provided for in the statute. It was said that as far as the Pointe Gourde principle was concerned the various statutory provisions, including those on the assumption of what planning permission might have existed in the absence of the scheme, were a comprehensive statement of that principle. There was no common law or extra-statutory principle to be applied in addition to the statutory provisions and certainly not such a principle as could add to the effect of those statutory provisions. All five Law Lords stated, or agreed with the statement, that the only surviving role of the Pointe Gourde principle was as an aid to the interpretation of the statutory provisions.

What it comes to is therefore this. If you wish to have the land valued after a compulsory purchase on the basis of leaving out of account something which has happened, or assuming the existence of something which has not happened, then you must look to a specific statutory provision (all, or nearly all, of which are contained in the Land Compensation Act 1961) in order to justify that process. If you cannot come within a statutory provision then the disregard of reality may not be made. The lesson then for lawyers and other practitioners is a plain one. Forget about the Pointe Gourde principle, save for the very limited role which it has. Forget about that principle as the first stage in the mental approach to a compulsory purchase valuation. Look only at the statutory provisions and see whether on a fair reading of them the disregard of any fact or event for the purposes of valuing the land acquired is prescribed by one or more of those provisions. It is all simpler and easier and less time consuming than it previously was.

(b) The Localism Act 2011

An important change has been made to the compensation legislation by the replacement of the existing ss.14-17 of the Land Compensation Act 1961 by new provisions effected under the Localism Act 2011. In order to explain this it is useful to start with some basic concepts of land valuation.

The "existing use value" of land means the open market value of the land if sold on the basis that it could never be used for any use except that to which it was put at the date of the valuation. It therefore excludes any value attributable to a material change of use or to physical development.

The expression "development value" is, somewhat confusingly, used in two senses. The first sense is that it is the open market value of the land on the assumption that it could as a matter of certainty be developed in some way either by a material change in its use or by some physical development. The other way in which the expression is used is to mean the total value of the land, assuming the certainty of such a change of use or physical development, less the existing use value, i.e. it is the additional value attributable to the land by reason of the certainty that a development could in the future be carried out.

The third expression is "hope value". This occurs when there is not a certainty that development can be carried out but only a prospect that it can. There may be a number of reasons which throw the prospect of development into doubt and the most important of these is often the uncertainty as to whether the requisite planning permission for the development can be obtained. Hope value means the additional value attributable to the land by reason of the hope, though not the certainty, of the development being able to be carried out. It often means, in effect, the value attributable to the hope of obtaining a planning permission. As explained earlier a frequent way of determining the hope value of land is to determine its development value but then to apply a substantial discount by reason of the uncertainty inherent in the prospect of obtaining planning permission or of overcoming whatever other impediment (for example the obtaining of consent under a restrictive covenant) there may be to the implementation of a development project.

There seems no reason why these concepts should not be applied in an ordinary and common sense way to the ascertaining of value for the purposes of compulsory acquisition. They are applied for the purposes of ascertaining value in all other areas where land valuation is necessary.

Unfortunately a complication has been introduced by the new s.14 inserted into the Land Compensation Act 1961 by s.232 of the Localism Act 2011. The complication is that one has to look, at the valuation date, at the question whether permission for the particular development "could at that date reasonably have been expected to be granted". The answer is that if it could reasonably be expected that permission would be granted then the valuation of the land proceeds not on the basis of the hope of obtaining the permission but on the basis that it is certain that the permission would be obtained. In other words a reasonable expectation or a hope is turned into a certainty.

I can explain what all this amounts to by a numerical example. Suppose that a piece of land has a hope of obtaining a planning permission for what would be, if the permission were obtained and implemented, a valuable development. If it is determined by the Lands Tribunal that the chance of obtaining that permission at the valuation date was 60% then there can be said to be within the terms of the new legislation a reasonable expectation that the permission would be granted. That chance is then turned into a certainty and the land is valued as though there were a certainty of obtaining the planning permission. Suppose, on the other hand, that it is determined that the chance of obtaining the planning permission was only 40%. In those circumstances there is not a reasonable expectation of obtaining the planning permission. The reason is that in this context reasonable expectation is normally taken to mean at least a 50% chance, or a chance on the balance of probabilities. At least this is how the matter was viewed in e.g. *Porter v Secretary of State*[15] and Lord Neuberger in *Spirerose*. In the case of the 40% determination that expectation, modest though it is, may still add significantly to the value of the land. Suppose that the land has an existing use value of £1 million and a value of £2 million with the certainty of a permission for the valuable development. In accordance with the figures just given if the expectation of obtaining that development at the valuation date is 60% the value of the land becomes £2 million. If the expectation is 40% then the value may well be £1 million plus 40% of the additional value which would be given by the certainty of permission, i.e. a total value of £1.4 million. This will appear bizarre to many people.

It is very difficult indeed to distinguish accurately between what is a 40% and what is a 60% chance of obtaining planning permission. It is still more difficult to differentiate between a 48% and a 52% chance. Yet small and difficult distinctions of this nature can have an enormous effect on the end value applying the approach required by the Localism Act. It is a pity that an already unsatisfactory and over-complicated valuation regime for the purposes of compulsory acquisition is now further bedevilled by this additional and unrealistic complication.

Finally, the new provisions in the Localism Act (and I have mentioned only one of the most important of those provisions) apply only to compulsory acquisitions which are started on or after 6 April 2012. There will therefore be a backlog of many acquisitions and many compensation claims which have to be determined under the old, and perhaps more rational and less complex, regime.

15 [1996] 3 All ER 693