Estates Gazette Law Reports/1987/Volume 2/Lindon Print Ltd and another v West Midlands County Council Compensation claims - [1987] 2 EGLR 200

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Lindon Print Ltd and another v West Midlands County Council Compensation claims

Court to be confirmed

November 14 1986

(V G WELLINGS QC)

Estates Gazette July 4 and 11 1987283 EG 70-76 and 202-205

Freehold single-storey workshop and offices in Aston, Birmingham — Tangled story over 17 years involving two confirmed CPOs, one made in 1969 by former Birmingham City Council for area redevelopment, the other in 1980 by West Midlands County Council for police purposes — The first claimants, a firm of printers ("Lindon"), owned and occupied subject premises for many years — Second claimants ("Campus"), a selling organisation for certain toys and games manufactured by Lindon, had no interest in subject premises but occupied or used part(s) — Notice to treat and notice of entry under first CPO, issued in 1972, was misaddressed — City council alleged, and its successor district council alleged and persisted for many years in alleging, that notices had been duly served on Lindon — Before tribunal district council conceded that notices had never been served — Notice to treat and notice of entry under 1980 CPO served on October 23 1981 and claimant companies evicted by bailiffs acting for acquiring authority on December 23 1981 — Thereafter Lindon ceased to trade and its plant, machinery and stock were stored and later sold, but Campus, which had no staff, moved to temporary leasehold accommodation for some 14 months and then to permanent premises at Stratford-upon-Avon

Total claims by Lindon were for £383,218, comprising £43,000 for interest acquired and remainder for disturbance on basis of total extinguishment including £257,482 for loss of goodwill — Acquiring authority argued that figure for interest acquired was £22,000 and that Lindon's other claims were inadmissible in that the company had failed to mitigate its losses — Until 14th day of hearing the authority maintained compensation for loss of goodwill was nil, even if all reasonable steps had been taken to mitigate — Tribunal agreed with claimants' valuer that it was appropriate to value reference property having regard to its value on assumption that necessary works had been carried out and then to deduct their cost (£7,000) — £1,000 to reflect management etc also deducted to give award of £36,000 for interest acquired

Claimants' search for alternative premises began in 1979 and continued into 1982 — In March 1980 claimants accepted offer from district council of undeveloped site about a quarter of a mile away and contracts were exchanged, plans proposed and planning permission obtained — But after eviction claimants stated they were unable to finance development and contract was terminated — Long and detailed account of steps taken by claimants — Plenty of alternative premises available but claimants could not afford them — Tribunal finds "honest, serious and indeed strenuous" attempts made by claimants to find alternative accommodation and that it was not reasonable to expect that in short period of two months such premises could have been acquired or taken, adaptation works carried out and specialist machinery installed ready for operation — Authority had failed to identify particular premises available in locality which were suitable to claimants' business — Claimants did not have sufficient funds to purchase, lease or adapt alternative accommodation — Their financial situation made worse by making of CPO and by its enforcement at Christmas — Authority had failed to discharge onus of proof and Lindon had not failed reasonably to mitigate its losses — Accordingly, losses to be assessed on basis of total extinguishment — Eminently a case to exercise tribunal's power to

assess compensation for loss of goodwill by robust decision as in Clibbett's case — £125,000 awarded after lengthy discussion of experts' evidence — Other sums awarded for losses on forced sale of plant and machinery (agreed at £26,700), direct costs of eviction (£2,310) and directors' and other expenses incurred in preparation of claims (£11,400), making total award to Lindon of £201,410 plus surveyors' fees — Campus awarded costs of its two removals (£5,065), both being a direct consequence of acquisition — Claimants awarded costs, including two-thirds of each item of such costs as would have been allowed if work done and disbursements made by claimants' controlling director over 18 months in 1984-85 had been done or made by a solicitor

The following case is referred to in this report.

Clibbett (W) Ltd v Avon County Council [1976] EGD 385; (1975) 237 EG 271, [1976] 1 EGLR 171, LT

Duncan Ouseley (instructed by Edge & Ellison Hatwell Pritchett & Co, of Birmingham) appeared for the claimants; G S Lawson-Rogers (instructed by the solicitor of West Midlands County Council) for the acquiring authority.

Giving his decision, **MR WELLINGS** said: This is a reference by Lindon Print Ltd and Campus Martius Ltd for determination of the amount of compensation to which those companies are entitled for compulsory purchase of a single-storey building and premises consisting of a workshop, offices, dark rooms, store rooms and ancillary accommodation at 16/18 Yates Street, Aston, Birmingham B6 4DL.

The reference property was freehold and had been owned and occupied by Lindon Print for many years. It is a close company established in 1887. In 1970 Mr Don Hughes acquired a minority interest in the company and in 1973 he and his wife, Mrs E T J Hughes, obtained full control of it. Lindon Print, until it ceased to trade at the end of 1981, was a firm of printers producing commercial stationery and jobbing printing. That business was carried on at the reference property. In December 1976, Mr Hughes acquired Pinnacle Print Ltd, another Birmingham printing company. In 1977, the two companies occupied the reference property with a joint labour force of more than 30 employees. There is no claim by Pinnacle.

In October 1979, Mr Hughes formed Campus Martius Ltd in order to diversify the business of Lindon Print into the production of toys

and games and thereby, he hoped, to increase Lindon Print's sales and profitability. Mr and Mrs Hughes and a third person are shareholders and directors of Campus Martius. That company had no interest in the reference property but merely occupied or used part or parts thereof. It had no staff and was a selling organisation for such toys and games as Lindon Print should manufacture.

The reference property has been the subject of two confirmed compulsory purchase orders. In 1969, the former Birmingham City Council made the Birmingham (South Aston) Compulsory Purchase Order 1969 which embraced 331 addresses including the reference property and the adjoining workshop premises, 12/14 Yates Street. That order was made for the purpose of the redevelopment of the area under powers contained in the Town and Country Planning Acts 1962 and 1968. It was confirmed by the Secretary of State for the Environment on March 31 1971 and became operative on June 22 1971, but prior to that date the city council had agreed to defer serving notice to treat and notice of entry on the reference property.

On January 27 1972 the city council addressed notice to treat and notice of entry in respect of the reference property to a company called Lilden Properties Ltd, care of a firm of accountants at an address in London.

On the assumption that that company and the accountants existed (as to which I have no knowledge) and that the address chosen was that of the accountants, it is nevertheless plain that that company and those accountants had no connection whatsoever with Lindon Print or Campus Martius. Accordingly, it is also plain that no notice to treat or notice of entry in respect of the reference property was ever served under the 1969 order on Lindon Print or Campus Martius or at all.

The former city council's compulsory powers under the 1969 order with respect to the reference property expired on June 21 1974. Nevertheless, the former city council alleged, and after April 1 1974 the Birmingham District Council alleged and persisted for many years in alleging, that notice to treat and notice of entry in respect of the reference property had been duly served on Lindon Print under the 1969 order. Between 1970 and 1978 all the properties, other than the reference property and 12/14 Yates Street, which were comprised in the 1969 order were demolished, leaving the reference property and 12/14 Yates Street completely isolated in a large open site and prey to the attention of vandals.

Between 1976 and 1979 negotiations took place between the district council and agents acting on behalf of Lindon Print for the sale by Lindon Print to the district council of the reference property. The negotiations were subject to contract. In 1979, the agents, who appear to have been under the impression that a valid notice to treat had been served in respect of the reference property, agreed a price of £20,000 for the reference property with the district council. On September 11 1979, 90% (£18,000) of that sum was paid to Lindon Print by the district council on account of that price. On February 21 1979, the district council approved the allocation to Lindon Print of an alternative site fronting on to Sandy Lane, Aston.

On October 30 1980, the West Midlands County Council made the County Council of West Midlands (Yates Street) Compulsory Purchase Order 1980 under the Police Act 1964. Both the district council and Lindon Print objected to the making of that compulsory purchase order and a public inquiry into it was held on May 6 1981. At the inquiry the district council claimed (incorrectly) that notices to treat and of entry in respect of the reference property had been duly served under the 1969 order. The Secretary of State for Home Affairs confirmed the 1980 order on October 15 1981 but varied the schedule to that order by *inter alia* adding the name of the district council (incorrectly) as owners or reputed owners of the reference property. The district council in due course transferred to the West Midlands County Council the balance of the land (that is to say the land already in its possession by virtue of the 1969 order) needed by the county council as police authority for a new police complex.

The claims for compensation in the present case are made under the 1980 order and the West Midlands County Council is the acquiring authority.

On October 23 1981 Lindon Print received from the acquiring authority notice that the 1980 order had been confirmed, notice to treat and notice of entry, both dated October 20 1981, in respect of the reference property. The notice of entry stated that the acquiring authority would upon the expiration of 14 days (November 5 1981) from the service of the notice enter and take possession of the reference property. The 1980 order took effect on November 30 1981.

On December 23 1981 the claimant companies were evicted by bailiffs acting under a warrant issued by the acquiring authority. On that date, Lindon Print's printing plant, machinery and stock were also removed from the reference property by the bailiffs and placed in store at the expense, after December 23 1981, of Lindon Print. Demolition of the reference property began on February 12 1982 and was completed on March 15 1982. In April 1982, Lindon's plant and machinery were sold on the instructions of Lindon Print. After December 23 1981 Lindon Print ceased to trade but Campus Martius moved to premises at Dogpool Mills, Stirchley, where it remained as tenant until March 1 1983, on which date it moved to permanent premises at Stratford-upon-Avon.

In April 1981 the district council registered a charge against the reference property claiming that a contract of sale thereof had been entered into in 1979. On April 17 1984, the district council commenced an action against Lindon Print in the High Court claiming a declaration that the district council might lawfully utilise the provisions of section 9 of the Compulsory Purchase Act 1965 to obtain the title to the reference property, alternatively an order for specific performance of the alleged agreement for sale on payment by the district council of the further sum of £2,000, damages representing a sum of money for use and occupation of the reference property, alternatively the repayment of the sum of £18,000 paid by the district council to Lindon Print on September 11 1979. On February 8 1985, after defence and reply had been served, judgment by consent was given for the district council in the sum of £18,000, the district council abandoning all other claims made in the action. Thereafter, Lindon Print repaid to the district council the sum of £18,000.

On March 24 1986, on the hearing of a reference by Lindon Print claiming compensation from the district council under the 1969 compulsory purchase order, the district council conceded before me that no notice to treat under that order had ever been served in respect of the reference property and I ordered that the reference be struck out for want of jurisdiction and made no order as to costs.

The claims for compensation

The claims for compensation made by Lindon Print, as adjusted during the hearing by Mr Hughes or by agreement between the parties, are:

(1) For the interest acquired	£43,000
(2) For disturbance:	
(a) for losses on forced sale of plant and machinery	26,700
(b) for loss of goodwill	257,482
(c) for direct costs of eviction	2,319
(d) for directors' and other expenses incurred in the preparation of the claims for compensation	53,717.68
	£383,218.68
Plus surveyors' fees	

The acquiring authority's case in respect of compensation for the interest acquired is that the sum to which Lindon Print is entitled is £22,000. The acquiring authority's main defence to Lindon Print's other claims is that most of them are inadmissible in that, it is said, Lindon Print failed to mitigate its losses. If that defence succeeds, the claim for compensation for losses on a forced sale must fail, but if the defence itself fails, then the claim for £26,700 is agreed. If Lindon Print failed to mitigate its loss, then, of course, it is not entitled to be compensated on the basis of total extinguishment of its business and its claim for compensation for loss of goodwill will also fail. If Lindon Print did take all reasonable steps to mitigate its loss, then the amount claimed for compensation for loss of goodwill is challenged on the ground that it originates in speculative material and is based on a false premise as to the viability and profitability of Lindon Print and Campus Martius.

Thus, even if Lindon Print be held to have taken all reasonable steps to mitigate its loss, it was, until the 14th day of the hearing, said that the amount of compensation for loss of goodwill to which Lindon Print was entitled was nil. On that day an accountant called by the authority admitted in cross-examination that Lindon Print was entitled, in that event, to compensation for loss of goodwill in the sum of £30,615.

On the 15th day of the hearing counsel for the authority in his final speech endorsed that concession. The other claims of Lindon Print are not affected by the point about mitigation but are challenged on various grounds.

The claims for compensation by Campus Martius, as adjusted during the hearing, are:

(1)	for costs of removal from the reference property to Dogpool Mills, Stirchley, on December 31 1981	£6,812.86
(2)	for costs of removal from Dogpool Mills, Stirchley, to Stratford-upon-Avon on March 1 1983	10,991.00
		£17,803.86

The principle of the first of these two claims is admitted but some of the constituent figures are challenged. The acquiring authority say that the claim for the cost of the second removal is not admissible.

Mr D Ouseley, for the two companies, called Mr Donald Hughes FICMA MBIM MIMC, a director and shareholder in both companies. He has much experience as a management consultant. Mr Ouseley also called Dr Robin Napier Goodchild MA PhD (Cantab) ARICS, a partner in Gerald Eve & Co, of London and elsewhere; Dr Norman Richard Gillhespy MA PhD FCA, a partner in the firm of Brittain & Bevan, chartered accountant auditors of the companies' accounts; and Mr Andrew Edmond Owen, who was employed by Campus Martius from October 1981 to March 1983.

Mr G S Lawson-Rogers, for the acquiring authority, called Mr Graham Ward Hall FRICS, chief building surveyor of the acquiring authority; Mr Kenneth Thompson FRICS, a quantity surveyor employed by the acquiring authority; Mr Godfrey Holder BSc ARICS, from 1979 to March 31 1986 a senior valuer in the valuation and estates department of the acquiring authority and now assistant principal valuer with Birmingham District Council; and Mr Ernest Leslie Bonser, a member of the Chartered Institute of Public Finance and Accountants, formerly principal auditor in the internal audit division of the acquiring authority and now principal assistant internal auditor of Birmingham District Council.

Compensation for interest acquired

The areas of the reference property were agreed as follows:

Yard with access from Yates Street	262 sq ft
Two stores with access from Yates Street	212 sq ft
Office accommodation	372 sq ft
Main workshop	2,325 sq ft
Mezzanine floor	112 sq ft
Rear store	112 sq ft
Rear yard	107 sq ft
Yard store	34 sq ft
Total	3,536 sq ft

The reference property was situated on the north side of Yates Street within a very short distance of the A38(M) motorway. It consisted of a single-storey structure of brick construction, the main portion of which was covered by a timber-trussed, boarded and felted gable roof. At the rear was an enclosed yard giving access to a number of small outbuildings and toilet of brick and timber construction. The workshop was built in 1935, the front portion of the reference property in 1938 and some other parts of it may have been erected later than that.

Both valuers, Dr Goodchild and Mr Holder, were instructed after the reference property was demolished and neither of them had been able to inspect it. However, Mr Hall and Mr Thompson had inspected the reference property on December 23 1981. Thereafter, Mr Hall wrote a report on the condition of the reference property and Mr Thompson wrote an estimate of the works which, according to Mr Hall, needed to be carried out on the building. The total cost of those works according to Mr Thompson was £15,000. Both Dr Goodchild and Mr Holder had seen that report and estimate, some black and white photographs of parts of the building, some colour photographs of poor quality taken by Mr Hughes and a description of the condition of the building by Mr Hughes, given orally before the hearing, in evidence at the hearing, and in a letter written by him on October 24 1982 to the valuation and estates officer of the acquiring authority in answer to Mr Hall's report, a copy of which had been sent to Mr Hughes.

From the sources available to him, Dr Goodchild concluded that there had been a serious area of damp in the north-east corner of the building which extended along the north-east wall for between 10 and 12 ft but that that wall southwards from that point was not affected by damp. He inferred that the north-west wall was not affected by damp because boxed games had been stored against it. He knew that vandals had frequently thrown bricks at the rooflights of the workshop and that the roof looked most unattractive because of the improvised nature of the repairs which had been carried out to it. There was no evidence, he said, that the condition of the roof had led to a permanent state of dampness in the building. The external flank walls would have benefited from rendering or repointing but those works were not essential. The rainwater collecting system consisted of gulleys inside the flank walls and there had been no sign that they were leaking. One of the rainwater goods had a gap between the pipe and the collecting trap. That pipe needed to be renewed, but that was a small item of repair.

Dr Goodchild believed that a purchaser would do that repair and would repair the roof in the area of the serious damp in the vicinity of the north-east corner; he would endeavour to prevent vandals continuing to cause damage to the roof by erecting some kind of fence in the vicinity of the rear part of the workshop so that they could not gain access via 12/14 Yates Street: that would be an improvement. The purchaser would also protect the rooflight in the main workshop area so that bricks would not come through: he would use some kind of wiremesh protection. When the wall in the north-east corner had dried out the purchaser would redecorate that part. For those works the purchaser would expect to pay between £1,000 and £1,500 merely.

For his primary valuation Dr Goodchild applied a capital value of £14 per sq ft, which he ascertained from nine transactions in respect of other single-storey workshops in the locality. Eight of them were open market transactions and one was a settlement, namely, in respect of 12/14 Yates Street. Dr Goodchild produced an analysis of all the transactions, showing areas and prices and dates of transactions together with percentage adjustments in each case representing differences in size, location and condition. The average price per sq ft after adjustment was £14.20 in capital terms. Dr Goodchild decided to adopt £14 per sq ft for the reference property. From that sum he calculated a unit capital value of £175 per sq ft for the workshop, front stores and the offices, with smaller rates per sq ft for the ancillary accommodation. The total was £5,359, which when recapitalised at 8 years' purchase in perpetuity produced £42,872, which was rounded up to £43,000.

Dr Goodchild received little assistance from Mr Holder's comparables because they were all multi-storey buildings which were suitable for warehouse purposes but not for industrial purposes. At the present day, industrial premises were invariably single storey because of the loads imposed on floors. All Mr Holder's comparables were in inferior locations. All but two of them had been demolished and only one was an open market transaction. Dr Goodchild's opinion was that if it were necessary to spend £15,000 or any other sum in excess of £3,000 on repairing the building the works inevitably would include some element of improvement and the appropriate course would be to value the reference property as if the relevant works had been carried out and to deduct from its value in that condition the cost of the repairs. This he had done in his alternative valuation. In that valuation he applied £1.85 per sq ft for the main areas, the total valuation being £45,688. From that figure he deducted £15,000, leaving a balance of £30,688, but to reflect management etc he reduced that amount to £30,000.

Mr Holder has had 16 years' experience of valuation in the West Midlands area and has had much experience of valuation for compensation for compulsory purchase in that locality. Dr Goodchild has had more than 13 years' experience of valuation and practises mostly from London.

Mr Holder said that the relevance of the figure of £15,000 in Mr Thompson's estimate to his valuation was that that figure provided a picture of the condition of the reference property and the likely cost of putting it into an acceptable state of repair and maintenance and its comparability with other properties. It was in effect a guide to what condition the property should be in for the purposes of industrial use. The figure of £15,000 did not appear as part of the calculation but influenced the rate per sq ft which ought to be applied in order to arrive at the capital valuation.

The method which he had adopted in his valuation was to apply a rental value to each area, aggregating and then capitalising: it was the normal method. He did not seek the capital value of the building on the assumption that the works had been carried out and then deduct the cost of them. His method enabled comparison with the comparables. He used capital values merely as a check. Accordingly, by reference to his comparables, he applied a rent of £1.25 per sq ft for the workshop, 50p per sq ft for the office and storage areas, 20p per sq ft for the mezzanine floor, 10p per sq ft for the front yard and

nil for the rear yard and yard store on the ground that they were incapable of occupation (Dr Goodchild gave a value to both). The aggregate rental value according to Mr Holder was £3,302, which when multiplied by years' purchase in perpetuity at 15% (6.66 YP) became £21,991, which Mr Holder rounded up to £22,000 (= £6.22 per sq ft of capital value).

He found support for his valuation in the valuation (£20,000) which Lindon Print's agents had agreed in negotiations with the district council. He did not dispute that in discussions with Mr Hughes on or about June 18 1981 Mr Peter Barrett, an officer in the valuation and estates division of the acquiring authority, had suggested a value of £22,000 (an increase of £2,000) over the offer previously made by the acquiring authority and had calculated that value by assuming its value in repair to be £40,000 and deducting therefrom £18,000, which he assumed to be the cost of putting the reference property into repair.

When Mr Hall and Mr Thompson made their inspection of the reference property on December 23 1981 they were present at the property for about one hour. In that time Mr Hall took the black and white photographs to which I have referred. He and Mr Thompson did not invite Mr Hughes or any other representative of the claimant companies to take part in the inspection; they carried it out on their own.

Mr Hall formed the view that the external walls, that is to say, the north-eastern and south-western walls, of the workshop were saturated with substantial areas of open-jointed and perished brickwork and decayed mortar. The walls were not in a sound condition sufficient to withstand the natural elements. He thought that the saturation was attributable to driving rain and ineffective disposal of rainwater from the roof. He did not think that there was any rising damp, but he did not carry out any tests and he did not go on to the roof. He recommended that waterproof rendering to the walls, including the preparation and repair of existing brickwork as necessary, be carried out. He said that there was evidence of extensive roof leaks in the workshop; the integrity of the rooflights was suspect; the existing felt roof coverings to the roof and the gables should be stripped off and renewed; the rooflights should be renewed and the roof boarding repaired as should be the lantern light. He recommended that rainwater gutters to the roof should be provided and internal rainwater pipes and underground drainage to connect with the main drains should also be provided.

Mr Hall's report was not prepared until May 1982. The delay was because of the pressure of other commitments.

Mr Thompson prepared a breakdown of the recommendations made by Mr Hall in his report and priced the individual items. The total was £15,000. He priced as at December 1981. The standard which he applied was that of a building which was of such a condition that it would readily be let to a private industrialist. He did not apply the standard which a purchaser of the reference property intending to use it for his own business might adopt.

I make the following findings as to the condition of the reference property as at December 23 1981 and as to the items of work which a reasonably minded purchaser, intending to take the property as at that date for the purposes of his own industrial business, would expect to carry out as a matter of urgency. The figures in brackets represent the cost which Mr Thompson attributed to the particular item.

(1) The brickwork of the north-eastern wall was perished, the mortar decayed and saturated; the brickwork of the north-western wall was also wet in parts but not to such an extent as the other flank wall. It would be prudent to apply waterproof rendering to both flank walls and repair the existing brickwork as necessary (£1,500):

(2) The roof was in a poor state; it had been damaged on many occasions by vandals and water had leaked through into the workshop; it had been the subject of many improvised repairs which would hardly satisfy a purchaser. The existing felt roof coverings should be stripped off and renewed (£2,570); similar repairs should be carried out to the felt coverings to the gables (£300);

(3) The rooflights, which had suffered the main attention from vandals, were in poor condition and should be removed and replaced (£1,650); the roof boarding should be repaired (£230);

(4) The lantern light was in poor condition and should be repaired (£230).

Those items account for a total of £6,480 out of Mr Thompson's costings.

I am not satisfied that the rainwater collection system of the workshop was inadequate. Mr Hall did not examine it. I hold that the dampness of the walls was attributable to the fact that the decayed brickwork readily absorbed driving rain. For these reasons I delete from Mr Thompson's schedule items of work (provision of rainwater gutters and internal rainwater pipes and underground drainage to connect to main drains) priced at a total of £2,870. I also see no justification for the inclusion in Mr Thompson's schedule of the following items:

(a) Repair roof structure including any strengthening of existing members (£1,150);

(b) Replacement of one pair of garage doors, six external and two internal doors (£1,350);

(c) Remove and renew 25% of warehouse floor (£1,500).

However, I hold that the reasonably minded purchaser as at the relevant date would regard the removal of existing sanitary fittings and replacement with two wc suites, one wash basin and one sink unit as being necessary (£400).

Mr Thompson's schedule contains an item for redecorations to walls and ceilings (£1,250). Mr Hall said that the purchaser would not regard redecorating as urgent. I agree with that view and propose to allow one half (£625) of the cost estimated by Mr Thompson for this item. The total of his estimates of costs for the items which I have regarded as necessary is £7,505. I propose to reduce that sum to £7,000 to allow for the possi-

bility that Mr Thompson applied too high a standard in calculating cost or that the purchaser might have been able to find a builder willing to do the work for slightly less than the amount spoken to by Mr Thompson.

It seems to me that the work which I have found to be necessary includes some element of improvement, particularly so far as the walls, roof and sanitary fittings are concerned. In these circumstances, I agree with Dr Goodchild that it is appropriate to value the reference property having regard to its value on the assumption that the works which I have found to be necessary have been carried out and then to deduct the cost of those works.

Counsel were in agreement that in the present case there are no comparable transactions, but it does appear to me that in valuing on the gross basis and deducting the cost of works Dr Goodchild's comparables are more useful than they would otherwise be. I am not much assisted by the eight transactions to which Mr Holder referred because all of them were in respect of multi-storey buildings in inferior locations to that of the reference property. Three of the buildings were erected before 1914 and one transaction was subject to contract and did not proceed to a sale.

I think that there is a danger that Dr Goodchild's alternative valuation of £45,688 is a little too high. Mr Holder did not provide a valuation on the gross basis and I propose to accept that the value of the reference property on December 23 1981 would have been £44,000 if the works which I have found to be necessary had been carried out. Deducting £7,000 from £44,000 leaves £37,000. From that sum I shall deduct £1,000 to reflect management etc. I thus award to Lindon Print by way of compensation for the interest acquired £36,000.

The question of mitigation

When Campus Martius was formed in October 1979 Mr Hughes' objective was, rather than be dependent on jobbing printing, to increase the profitability of Lindon Print by diversifying into the production of new products, such as boxed games and electronic games. The function of Campus Martius was to act as a selling organisation for the new products, operating from the same premises as Lindon Print. A high proportion of the cost of production of such products, particularly boxed games, is represented by the cost of printing of boxes, cards, instructions etc. Such printing was to be undertaken by Lindon Print and at a cost which naturally would be less than if undertaken by some other printer. For this purpose new specialist printing presses were installed at the reference property by Lindon Print in place of its old printing machinery, which was sold.

In 1979 Mr Hughes had begun the development of a boxed game called “Motorway”. The development of it took about two years to complete. By August 1981 the game was being manufactured and was available for sale. By that time Mr Hughes had spent £93,000 out of the resources of Lindon Print in developing “Motorway”, but he had run out of cash. However, on August 6 1981 Campus Martius

obtained an overdraft facility of £75,000 (the maximum obtainable) under the Small Firms Loan Guarantee Scheme. The effect of that scheme was that the loan (though not the payment of interest on it) was guaranteed by the Government. Lindon Print provided a guarantee of £15,000 for the loan, which guarantee was supported by a debenture. The document recording the arrangement for the loan stated that the purpose of the facility was “to finance marketing plan and working capital for recently developed new box game called Motorway plus costs to complete development on electronic dice game”.

With the aid of that loan Mr Hughes in the autumn of 1981 set about the promotion of Motorway for which purpose he booked radio advertising time, television advertising time in the months of October, November and December 1981 and printed leaflets describing the game.

Mr Hughes knew in 1978 that the acquiring authority wished to acquire the reference property. He began looking for alternative premises for Lindon Print and Campus Martius in 1979 and continued the search in 1980. He got in touch with estate agents, telling them that he required a property of between 3,000 and 5,000 sq ft. At regular intervals they sent particulars of properties which were available. Mr Hughes looked at some of them: about six in all. The premises which he required had to be single-storey with a firm concrete foundation because the printing machines needed to be firmly bedded in concrete in order to prevent vibrations. Central heating was essential for printing, as was three-phase electric power. Mr Hughes was intent on staying in business and investigated the possibility of alternative accommodation in Corby, Plymouth, Cardiff and elsewhere.

On March 7 1980 the district council offered to Lindon Print an undeveloped site of 743 sq yd (about 50% larger than the reference land) at Sandy Lane, Aston, approximately one quarter of a mile from the reference land, at the price of £10,000. The offer was accepted by Lindon Print on March 28 1980; contracts were exchanged on January 6 1981, on or about which date Lindon Print paid £1,000 as a deposit. The contract was conditional in the sense that there was an outstanding interest in the site which the district council needed to acquire in order to convey it to Lindon Print. Mr Hughes' preference was that any alternative property should be freehold and the Sandy Lane site was freehold. He instructed architects, who prepared plans for a building for which planning permission was obtained on September 17 1980 and building regulations approval on August 11 1981.

The proposed building was to have an area of 6,350 sq ft, approximately double that of the reference property. The proposed floor area would be divided equally between workshop and office accommodation. Lindon Print received tenders for construction of the proposed building, the lowest being £87,000 and the most expensive £130,000. Lindon Print was advised by its agents that the value of the proposed building on the open market would be about £160,000.

After the eviction of Lindon Print from the reference property, the district council agreed to the contract for sale of the Sandy Lane site being assigned to Campus Martius. On June 30 1982, the contract for sale became binding. On August 11 1982, Campus Martius wrote to the district council that the company was unable to finance the proposed development and the contract was terminated on September 29 1982 and the deposit forfeited. The reason for the rescission of the contract was that Mr Hughes was unable to bridge the gap between the amount of compensation (£20,000 at that time) offered by the acquiring authority and the amount (about £100,000) which Mr Hughes regarded as the cost of erection of the proposed building at Sandy Lane. He was unable to obtain any loan for that purpose.

When the acquiring authority made its compulsory purchase order (October 30 1980) Mr Hughes accelerated his search for alternative accommodation. He looked at properties in the area. He was, however, still hopeful about the Sandy Lane site and contacted financial organisations about that. He had meetings with officers of the district council and the acquiring authority for the purpose of discussing financial assistance for development of that site. The question of alternative accommodation other than that site was in the hands of local agents. Mr Hughes looked at numerous properties but found nothing suitable within his means or that of his companies.

On March 4 1981 Mr Hughes was informed by the valuation and estates officer of the acquiring authority that its compulsory purchase order had been submitted to the Home Office for confirmation. On May 6 1981 a public inquiry into that order took place. Lindon Print's case at the inquiry was that, although the company wished to leave the reference property as soon as possible and re-establish a flourishing and active business, until such time as a satisfactory settlement figure could be agreed it would use every legal means at its disposal to stay in business at the reference property; that the compensation offered by the acquiring authority for the Sandy Lane site was quite inadequate to meet the estimated costs of the proposed building at Sandy Lane.

The inspector accepted that in summary the company's objection was based on a desire to stay in business and the obstacles were those of valuation and compensation. He expressed the opinion that it would not be unreasonable to expect that the various authorities could quickly find at least temporary accommodation to enable the company to continue in business until the complicated financial difficulties with the district council had been resolved. On October 15 1981 the Secretary of State for Home Affairs confirmed the acquiring authority's order, but Lindon Print was not informed of that fact until October 23 1981, on which date:

(1) The company received notice to treat in respect of the reference property;

(2) the company received notice of entry entitling the acquiring authority to take possession of the reference property on or after November 5 1981;

(3) Mr Hughes' sales campaign for Motorway and Campus Martius began.

On October 30 1981, Mr M J Feather, valuation and estates officer of the acquiring authority, wrote to Lindon Print offering £22,000 as compensation for the interest to be acquired. In his letter he added:

> I would advise you that if you do not vacate the premises on 5th November 1981 I will instruct the County Secretary's Legal Section to instruct the Sheriff to obtain vacant possession in pursuance of the Notice of Entry under the provisions of the confirmed compulsory purchase order.

On November 5 1981 Mr Hughes replied declining the offer of £22,000 for the company's interest in the reference property and stating that “we are not prepared to vacate the premises today, 5th November, 1981, because we have no alternative accommodation in which to continue our business.” He spoke of discussions which he had had with the leader of the acquiring authority and various other councillors, all to no avail. He added:

> We now have no alternative other than to instruct our Solicitors to sue for compensation on a total extinguishment basis and would estimate that the cost to the County Council would be well in excess of £125,000. It appears that you have at last been successful in closing down our business — established in 1887 — and adding to the unemployment burden of the West Midlands.

In letters dated November 10 and 16 1981, Mr Feather stated his opinion that Lindon Print's business would not qualify for compensation on a total extinguishment basis because the company had failed adequately to mitigate its loss. The advice so given was wrong in law because it treated the duty to mitigate as absolute and ignored the requirement of reasonableness. With his letter of November 16 1981, Mr Feather provided a list of 13 local industrial properties which were available. Mr Hughes looked at some of them but formed the conclusion that Lindon Print could not afford any of them. It was not suggested at the hearing that the company ought to have relocated into any of them and I am satisfied that I can disregard them all.

On December 7 1981, the sheriff wrote to Lindon Print saying that he had been instructed to proceed with his warrant and must therefore request the company to vacate the reference property by noon on Tuesday December 8 1981, failing which steps would be taken to evict the company without further notice. On December 11 1981, Mr Hughes replied to Mr Feather's letter dated November 16 1981 saying that the company was being forcibly evicted from its premises, could not afford new premises because of the level of compensation offered, required financial assistance if it were to continue in business in the West Midlands area, was not prepared to suffer financially for the pleasure of being evicted, but was prepared to listen to any further proposals which the acquiring authority might have to save the company. He suggested various possibilities including financial assistance by the acquiring authority and the provision of alternative accommodation by it.

He applied to the acquiring authority's economic development unit for financial assistance, but was informed on January 13 1982, that is to say after

eviction on December 23 1981, that the loan which he sought was not consistent with the economic development unit's current policy.

On December 2 1981, Mr Feather had written to Mr Hughes that “with regard to settling your compensation, I am unable to offer you any further assistance until you have taken some positive action with regard to relocating your business”. On December 9 1981, Mr Feather wrote to Mr Hughes: “As the County Council has no premises suitable for your purpose I have been unable to offer you any accommodation, nor am I in a position to offer you any temporary accommodation.”

In evidence, Mr Hughes said that after receipt of the notice to treat he was in a panic: he was running two companies, promoting Motorway, and involved with various advertising agencies. At the same time he continued to seek alternative accommodation and financial assistance. He expressed the view, and Dr Goodchild agreed with him, that eight weeks after notice to treat was insufficient time in which to find suitable alternative accommodation.

Mr Owen was employed by Campus Martius from October 1981 to March 1983. He was employed to assist with the administration of Campus Martius and sales of its main product, Motorway. He made personal calls and telephone calls to potential customers, arranged direct mailing and was responsible for administrative functions such as putting invoices on to the computer. After October 20 1981 he was instructed by Mr Hughes to devote his main attention to seeking alternative accommodation for the two companies. To that end he contacted at least a dozen estate agents with a view to finding premises either to buy or to rent. He did not specify the price or the rent that would be payable. He was given details of a considerable number of properties many of which he inspected. They were all unsuitable for one reason or another.

In cross-examination, Mr Hughes agreed that at all relevant times there were plenty of suitable alternative premises, both freehold and leasehold, available. His preferences were first for the site at Sandy Lane, then for other freehold premises or leasehold premises in that order. The fact that alternative premises were available was, however, irrelevant, because he simply could not afford them, whether freehold or leasehold. Almost certainly any suitable premises would require to be adapted by the provision of a suitable concrete floor, three-phase electric power and central heating. The total cost of such provision would be £10,000. On top of that would be the purchase price, if freehold, or the rent of about £10,000 per annum (£2.50 per sq ft) if leasehold. He had no funds with which to pay such cost, price or rent. He could not make use of the loan from Barclays Bank because its purposes were closely prescribed. If suitable premises were leasehold, there might be a delay while the landlord's consent was obtained, and a further difficulty might be that rent might be payable in advance. He could not afford suitable alternative premises whether before or after Christmas 1981.

Mr Hughes and Mr Owen continued to seek alternative accommodation after eviction until Lindon Print's specialist machinery was sold in April 1982. They were hoping to relocate both Lindon Print and Campus Martius in one and the same premises together. Mr Hughes decided to sell the plant and equipment because of the storage charges which were mounting up. He found temporary leasehold accommodation for Campus Martius at Dogpool Mills on December 31 1981. There was less difficulty in finding suitable accommodation for Campus Martius than for Lindon Print because Campus Martius required only office and warehouse accommodation. In or about February 1982, Mr Hughes made inquiries of a number of well-known estate agents seeking information as to the availability in Birmingham of freehold industrial property of about 4,000 sq ft close to a motorway for the price of £20,000. Generally he received replies to the effect that such premises were not available in Birmingham for such a price. Mr Hughes, of course, knew that. He was in effect

seeking to make a point, namely, that the compensation which he had been offered for the reference property was inadequate, as indeed it was.

In these circumstances, Mr Lawson-Rogers submitted that the onus of proof in respect of mitigation was on the claimants, but he cited no authority for that proposition. He said that the claimants had been demanding such compensation as would have enabled the move to Sandy Lane to take place and if they did not receive it, then Lindon Print's business was going to be extinguished. They were not entitled to take that view or that position with respect to extinguishment. The losses which Mr Hughes claimed Lindon Print had suffered were not the natural and reasonable consequences of the eviction, so that extinguishment was not the correct basis.

Mr Lawson-Rogers said that, as a matter of law, he could not argue that the requirement to mitigate arose before the date on which notice to treat was served, but before that date Lindon Print was put on notice that the duty to mitigate would arise. Mr Hughes knew from early 1981 that the acquiring authority wanted his premises. Mr Hughes acknowledged that there was an abundance of freehold and leasehold premises suitable for relocation of Lindon Print and that company ought to have been relocated at or before eviction. Alternatively, it ought to have been relocated in the period from October to March 1982. The fact that even a temporary relocation of Lindon Print did not occur showed that there was no serious intention of relocation of that company unless an outrageous payment were made.

Mr Ouseley referred to chapter 7 of *McGregor on Damages*, from which chapter the following propositions of law (if the following references for words in the text be substituted: “claimant” for “plaintiff”, “acquiring authority” for “defendant”, “eviction” for “defendant's wrong” and “compensation” for “damages”) can be extracted:

> 1 A claimant must take all reasonable steps to mitigate the loss to him consequent upon the eviction and cannot recover compensation for any such loss which he could thus have avoided but has failed, through unreasonable action or inaction, to avoid. Put shortly, a claimant cannot recover for avoidable loss (*McGregor*, para 209).
>
> 2 The onus is on the acquiring authority to prove that the claimant has failed reasonably to mitigate his loss (paras 215 and 216).
>
> 3 A claimant is only required to act reasonably and the standard of reasonableness is not high (para 233).
>
> 4 A claimant will not be prejudiced by his financial inability to take steps in mitigation (para 241).

The two-months' period between October 23 1981 and December 23 1981 was a very busy time for Mr Hughes, who was the alter ego of both companies. It was a period in which he was heavily engaged in promoting his new products; as Christmas approached, the demand for his product “Motorway” might be expected to increase. In my judgment, that period of two months was quite inadequate for a company such as Lindon Print to relocate. I accept that Mr Hughes is honest, frank and able. I accept that by his own actions and those of Mr Owen he made honest, serious and indeed strenuous attempts to find suitable alternative accommodation and that he failed to do so. On the assumption that somewhere in the West Midlands area such accommodation existed, I accept that in all probability it would require to be adapted to take Lindon Print's specialist machinery and to provide central heating and three-phase electricity and that the cost of such adaptation would be £10,000. There would be a delay while such adaptation works were being carried out. It is not reasonable to expect that in the short period from October 23 1981 to December 23 1981 suitable alternative premises could have been acquired or taken, the works of adaptation carried out and the specialist machinery installed ready for operation.

Mr Hughes was criticised for paying too much attention to the site at Sandy Lane. It was said that the building which he proposed to erect there was always outside his financial capacity. I am not certain that these criticisms would be justified if there had been no compulsory order made by the acquiring authority. It is conceivable that Mr Hughes would then have been able to raise the money necessary to bridge the gap between his deposit and the sum which he regarded as essential. Moreover, he might have been able to recover some of the cost by subletting part of the proposed building. He was also criticised for ignoring the possibility of alternative accommodation which was leasehold. I sympathise with his desire that such accommodation should be freehold. It is not unreasonable that the owner of freehold premises should seek alternative premises which are freehold. Such premises are an asset and could be used as security for a loan. Further, I am satisfied that Mr Hughes did not ignore leasehold premises nor did Mr Owen.

Mr Ouseley submitted that it is incumbent upon the acquiring authority to identify the step in mitigation which ought to have been taken and to prove that if taken it would reduce or avoid the loss claimed. I am not entirely certain that that proposition is correct, but I am certain in the present case that because the acquiring authority has failed to identify the step which ought to have been taken by Lindon Print in mitigation, that is to say that it has failed to identify particular premises available in the locality which were suitable to Lindon Print's business, the acquiring authority in the circumstances

of the present case is quite unable to discharge the onus of proof which is upon it.

Unless I know the particular premises which are said to have been suitable I cannot judge whether adaptation of them to receive the specialist machinery would be necessary, how long that adaptation would take and how soon Lindon Print could reasonably be expected to be in operation again. Moreover, if premises were alleged to be suitable but were leasehold I cannot judge whether the claimants have acted reasonably unless I know the terms on which they would hold, what the rent would be and whether it would be payable in advance, whether a premium would be payable and whether the covenants were unduly onerous.

Further, I find as a fact that Mr Hughes and his companies simply did not have sufficient funds to purchase alternative accommodation or to take a lease of it or to adapt premises when found. His financial situation and that of the companies was made worse by the making of the compulsory purchase order and by its enforcement at Christmas 1981. In all the circumstances I find that the acquiring authority has failed to discharge the onus of proof and that Lindon Print did not fail, whether by December 23 1981 or April 1982, reasonably to mitigate its losses. Accordingly, in my judgment its losses are to be assessed on the basis of total extinguishment of its business.

Compensation for losses on forced sale of plant and machinery

By reason of my decision on the question of mitigation and extinguishment of business, I award to Lindon Print the agreed sum of £26,700.

Compensation for loss of goodwill

The claim for compensation in the sum of £257,482 represents a capitalisation by Dr Gillhespy of the level of maintainable profits of Lindon Print calculated by him for the years 1982 to 1986 on the

APPENDIX I

Lindon and Campus — actual and projected trading results 1980-1986

	Line No	1980 £	1981 £	1982 £	1983 £	1984 £	1985 £	1986 £
CAMPUS								
Selling prices each:								

Boxed games	1	3.5	3.5	3.5	3.5	3.5	3.5	3.5
Electronic	2	—	—	—	12.5	12.5	12.5	12.5
Cost of sales each:								
Boxed games	3	2.25	2.25	2.25	2.25	2.25	2.25	2.25
Electronic	4	—	—	—	8.00	8.00	8.00	8.00
Forecast sales:								
Original forecast (1980)	5i	—	20	40	60	75	90	120
Revised forecast (Jan 1981)	5ii	—	24	125	230	315	525	610
Revised forecast (Jan 1982)	5iii	—	—	105	210	558	780	975
Actual results 1982-1983	5iv	14	24	150	140	—	—	—
Forecast 1985								
Boxed games — ('000 units)	6	—	—	(50)	(60)	(70)	(80)	(100)
— Value £(1x6)	7	—	—	175	210	245	280	350
Electronic — ('000 units)	8	—	—	—	(20)	(30)	(40)	(50)
— Value £(2x8)	9	—	—	—	250	375	500	625
Total Campus sales 5iii (7 + 9)	10	14	24	175	460	620	780	975
LINDON								
Forecast sales:								
Base turnover (see notes)	11	61	87	90	100	110	120	150
Boxed games (6 x 3)	12	—	—	112	135	158	180	225
Electronic games (8 x 4)	13	—	—	—	160	240	320	440
Total Lindon sales (11 + 12 + 13)	14	61	87	202	395	508	620	775
Cost of sales:								
Base turnover (60% x 11)	15	33	54	54	60	66	72	90
Boxed games (25% x 12 x 85%)	16	—	—	24	29	34	38	48
Boxed games (75% x 12 x 60%)	17	—	—	50	61	71	81	101
Electronics (75% x 13)	18	—	—	—	120	180	240	300
Total cost of sales (15 to 18)	19	33	54	128	270	351	431	539
Contribution:								
Base turnover (11 to 15)	20	—	—	—	—	—	—	—
Boxed games (12 to 16 + 17)	21	—	—	—	—	—	—	—
Electronics (13 to 18)	22	—	—	—	—	—	—	—
Total contribution (14 to 19)	23	28	33	74	125	157	189	236
Overheads:								
Variable (9% x 14)	24	7	7	18	35	46	56	70
Fixed (1982: 27K x 10%)	25	41	28	30	33	36	40	43
Additional fixed	26	—	—	—	—	—	10	15
Total overheads (21 to 23)	27	48	35	48	68	82	106	128
Net profit (23 to 27)	28	(20)	(2)	26	57	75	83	108

assumption that there had been no compulsory purchase order. The level of maintainable profits used by Dr Gillhespy originates from a “forecast” or “projection” or assessment made by Mr Hughes in 1985. Mr Hughes' 1985 assessment was made by him after comparing the actual performance of Campus Martius for the years 1982 and 1983 with a forecast of that performance made by Mr Hughes in January 1982. The maintainable profits which Dr Gillhespy used as the basis of his assessment are to be ascertained from a document prepared by Dr Gillhespy which shows how they are calculated. That document is Appendix I to his report, which appendix is attached to this decision. In that appendix all figures other than those in lines 1-4 are in

thousands of pounds. All figures are in pounds other than those which are in brackets which, save in line 28 (where they represent losses), are units.

The figures in the document derived from figures given to Dr Gillhespy by Mr Hughes and they were supported by evidence given by him at the hearing. The function of Dr Gillhespy, so far as the ascertainment of the figures was concerned, was to correct and adjust Mr Hughes' figures where necessary and where appropriate to temper his enthusiasm. It was Dr Gillhespy's opinion that a simple average of the net profit shown in line 28 for the years 1982 to 1986, namely £69,800, represented the level of profits maintainable for those five years. I subsequently show how Dr Gillhespy made use of that figure.

As I have already said, the purpose of the formation of Campus Martius was that it should be a selling organisation for new products to be manufactured and assembled by Lindon Print. As Appendix I shows, the actual sales of Campus Martius for 1980 and 1981 were respectively £14,000 and £24,000 in value. In his January 1982 forecast, which, Mr Hughes admitted, was made for the purpose of making a claim for compensation, Mr Hughes calculated that the sales for 1982 by Campus Martius would be £105,000 in value: see line 5iii of Appendix I. In the event the actual sales in that year were worth £150,000 (see line 5 iv). Nevertheless, for that year Mr Hughes calculated in 1985 that the sales ought to have been worth £175,000 (line 10). This was because, if there had been no compulsory purchase, Lindon Print and Campus Martius would have been together in the same freehold premises, Lindon Print would have supplied the materials from which boxed games sold by Campus Martius were made and at a cost less than that charged by other suppliers, and Mr Hughes and Mr Owen could have devoted their entire time to manufacturing, selling and promoting sales by Campus Martius instead of spending time on searches for alternative accommodation, negotiating with the acquiring authority, arranging for sales of plant and equipment and preparing claims for compensation etc.

For 1983, Mr Hughes in his 1982 forecast estimated sales of £210,000, which included £60,000 for electronic games. Accordingly, his assessment in 1982 for boxed games for 1983 was £150,000. In the event, Campus Martius in 1983 sold £140,000 worth of goods consisting, I believe, entirely of boxed games. The reason for that dip in sales compared with the actual achievement for 1982 and with the 1982 forecast for 1983 was blamed by Mr Hughes on the fact that in 1983 he ran out of cash. In October 1982 he had obtained an overdraft facility of up to £100,000 from a Swiss bank called Saracen. In 1981 he had used up half of the Barclays Bank loan. In 1982 he used the balance of that loan and £60,000 of the Saracen overdraft facility on advertising, everyday running costs and development work on new games, particularly electronic games. His cash outflow in 1983 was £105,309. Retailers were not interested in the reputation of a product. They insisted that it be supported by advertising. If there had been no compulsory purchase order he would have been able to raise a loan for the purpose of advertising Campus Martius' products on the security of Lindon Print's freehold property and could have used other funds generated by Lindon Print for the same purpose.

If he had been given even a modest sum by way of compensation by the acquiring authority in 1982 or 1983 he would have been in a stronger position in 1983 than was actually the case and would have needed to spend less time on the claim than he in fact spent. For those reasons, notwithstanding that the actual sales in 1983 dipped compared with 1982, his 1985 assessment for sales by Campus Martius in that year was £460,000. In 1982 he had produced a fully-engineered electronic game called “electronic liar dice” ready for sale, but his development of other electronic products had stopped. His 1985 assessment for 1983 took into account projected sales of

electronic liar dice but ignored other electronic games.

In 1984 there were no sales at all by Campus Martius. According to Mr Hughes, that was because in that year he had to, and did, devote his entire time to the claims for compensation. Nevertheless, his assessment in 1985 for 1984, as shown by line 10 of Appendix I, was £620,000 in value. There were no sales in 1985

and the assessment for that year made in that year, as shown in line 10 also, was £780,000. Appendix I shows no actual sales for 1986, but when the hearing was resumed in May in 1986, after a considerable interval of time, evidence as to actual sales in 1986 of electronic liar dice was given. I will refer to it subsequently. Mr Hughes' 1985 projection for 1986, as shown by line 10, was £975,000. His assessments of the number of boxed games which would have been sold in the years 1982 to 1986 if there had been no compulsory purchase order are shown in line 6 (increasing from 50,000 units to 100,000 units over that period by a steady progression). The value of those units is shown in line 7 (increasing from £175,000 to £350,000).

The assessments for electronic games over the period from 1983 to 1986 are shown in lines 8 and 9 and the totals (in value terms) for both boxed games and electronic games in line 10. The projections are then translated into sales by Lindon Print by multiplying the number of units shown for the particular year in lines 6 and 8 by the cost of production shown in lines 3 and 4 respectively. The results are shown in lines 12 and 13. To them are added, in line 11, the estimated value of Lindon Print's base turnover (from its traditional or jobbing printing) and the totals for Lindon Print are given in line 14. The costs of sales are deducted by taking certain percentages: see lines 15 to 19. Fixed and variable overheads are then deducted and the net profit ascertained in line 28.

As I have stated, the average of the net profits for the years 1982 to 1986 stated in line 28 is £69,800. Dr Gillhespy then seeks to discover Lindon Print's true maintainable profits by comparing that sum with the industrial norm, which he calculates to be £4,057. Deducting that sum from £69,800, the balance is £65,743. Dr Gillhespy then shows that the capitalisation value of Lindon Print's excess profits is £257,482 as follows:

Excess profits	£65,743
Less corporation tax at 30%	19,723
Profit after tax	46,020
Capitalised at 7.46	343,309
Less 25%	85,827
	£257,482

Dr Gillhespy made the deduction of 25% because Lindon Print was heavily dependent on one customer, namely Campus Martius, and since it was a small private company he thought that it would be unrealistic to value Lindon Print, albeit on the basis of value to the owner, at £343,309. When the deduction of 25% is taken into account the multiplier of 7.46 is equivalent to 5.3 years' purchase or 3.68 years' purchase before tax.

The audited accounts of Lindon Print for the years 1978 to 1981 show net profits or net losses as follows: for 1978, a profit of £11,856, for 1979 a loss of £20,725, for 1980 a profit of £9,299 and for 1981 a loss of £2,491. The audited accounts for Campus Martius for the years 1980 to 1983 show net profits or losses as follows: for 1980 a loss of £25,983, for 1981 a loss of £31,760, for 1982 a loss of £34,127 and for 1983 a profit of £2,759. One particular item of cost, namely the cost of new product development, played a substantial part (£25,780, £41,150, £14,751 and £3,494 respectively) in those losses.

Mr Holder, in determining whether Lindon Print were entitled to compensation for loss of goodwill, appears only to have considered the position of Lindon Print and to have confined his attention to their accounts for the years 1978 to 1981. Notwithstanding having adjusted the losses and profits of Lindon Print shown in the accounts for the years 1978 to 1981, and to a certain extent in the company's favour, he discovered that the average for those years consisted of loss of profit. He said that if there were no profit there could be no loss of profit and no loss of goodwill. Accordingly Lindon Print was not entitled to compensation under that head. If there had been an average loss of profits for those years he would have applied a multiplier of between 1 1/2 and 3 years' purchase to it.

Dr Gillhespy and Mr Bonser also adjusted Lindon Print's accounts for years up to 1981 (in the case of Dr Gillhespy, from 1977 to 1981). Dr Gillhespy was seeking to ascertain whether Lindon Print would have been in loss or profit over those years if the activities of Campus Martius were ignored. For that purpose he treated directors' remuneration as being in its nature profit and added it back. He also added back a substantial part of the development cost of new product. The effect was that in each of the five years Lindon Print was shown to be in profit, the average being £20,205 per annum. After deducting the normal profit and corporation tax and capitalising at 7.46% and then deducting 25%, the goodwill of Lindon Print without Campus Martius was shown to be worth £50,056.

Mr Bonser approached the question in various ways. He examined the accounts of the two companies for the years 1977 to 1982 and he applied to the turnover there found multipliers based on the general index of retail prices and discovered that in real terms there had been a decline in turnover and not a rise. He did not explain fully why he applied the retail prices index to a wholesale business.

Mr Bonser did not disagree with the method used by Dr Gillhespy in his Appendix I or with the method he had used in order to capitalise excess profits, or, as I understand it, with the multiplier of 7.46. However, Mr Bonser thought that Dr Gillhespy had applied the wrong rate of corporation tax and he produced a calculation showing that if 40% corporation tax were applied Dr Gillhespy's calculation of £257,482 would be reduced to £220,700. I understand, however, that Mr Bonser would be willing to accept an average rate of tax of 31.6%.

Mr Bonser was wholly unwilling to accept the underlying figures to which Dr Gillhespy's methods were applied, that is to say he was unwilling to accept Mr Hughes' projections, which he regarded as devoid of certainty and ambitious in the extreme.

Of all the available methods for examining the position of Lindon Print and Campus Martius, Mr Bonser preferred, at all events in examination-in-chief, to make his own projection of trading results for the two companies for the years 1980 to 1986 based, he said, on facts and published actual results. The figures which he set out in his report for that projection show a total loss of £16,000 for the years 1982 to 1986. That loss led him, quite logically, to express the opinion that there was no loss of goodwill. However, during Mr Ouseley's able cross-examination, Mr Bonser was persuaded to make certain adjustments to his projections of costs of sales, which adjustments have the effect of turning a loss of £16,000 into a gross profit of £14,000. After deducting normal profit (say £4,000) from £14,000 and then corporation tax at 31.6% (£3,160), multiplying the balance (£6,840) by 7.46 and deducting 25%, the result is £38,269. It is my understanding that Mr Bonser conceded that that sum represents the minimum compensation to which Lindon Print (considered together with Campus Martius) is entitled for compensation for loss of goodwill.

Mr Lawson-Rogers would not make that concession, but I have no difficulty in holding that that is indeed the minimum amount to which Lindon Print is entitled on that account. Of course, my award of £36,000 for the interest acquired has the effect of altering the normal profit and, I believe, reduces it to £3,500. The effect of that reduction is to increase Mr Bonser's concession from £38,269 to £40,183. Electronic games played no part in Mr Bonser's projections.

The concession which Mr Lawson-Rogers did make in his final speech was that, if the question of mitigation were decided in favour of the claimants, Lindon Print was entitled to compensation in the sum of £30,615, which sum was conceded also by Mr Bonser as the amount of profit attributable to Lindon Print without profits made by Campus Martius being added in. That concession by Mr Bonser arose out of a document prepared by Dr Gillhespy showing that the profit made by Lindon Print itself in 1983 on Mr Bonser's own figures could be taken as being £17,492 (rounded down to £17,000). There was a dispute as to £5,000 of that sum, but the outcome of £30,615 springs from treating £12,000 as profit, deducting normal profit of £4,000 and tax at 31.6%, multiplying the result by 7.46 and deducting 25%. £30,615 would be increased to £32,529 if the normal profit were altered to £3,500 by reason of my award of £36,000 for the interest acquired.

There was an adjournment of several months after Dr Gillhespy gave evidence and before Mr Bonser gave evidence and in that time there was produced evidence in the form of an agreed document showing that in 1986 26,700 units of electronic liar dice have been sold. That represents a gross margin of £53,400. According to the claimants, after deducting costs of sales and overheads the sales of these electronic units represent a profit to Lindon Print of £50,000. Mr Bonser was not willing to agree that sum because, he said, he had insufficient information as to expenditure. The claimants seek to

treat that sum as profit in 1983 because, they say, if there had been no compulsory purchase some 26,700 units of electronic games would have been sold in that year and they point to Mr Hughes' 1985 projection of 20,000 units (line 8 of Appendix I) for that year. I have some sympathy with that proposition. I bear in mind also that the 26,700 units of electronic liar dice were sold in a relatively short period (200 on November 7 1985; 9,500 on March 18 1986; and 17,000 on May 1 1986). In a full year rather more might have been sold. Moreover, in a no-scheme world electronic games (other than liar dice) and boxed games (other than Motorway) might have been available for sale and sold in 1983.

Mr Ouseley said that if I were to reject Dr Gillhespy's calculations based on his Appendix I and the figure of compensation (£257,482) resulting therefrom I might consider a calculation based on a sum of £17,000 representing profits of Lindon Print, which calculation produces £49,750 (after deducting normal profit of £4,000, tax at 31.6% and multiplying by 7.46 and deducting 25%) to which sum he adds, on account of electronic games, £50,000. The total is £99,750, which would become £101,664 if the normal profit is £3,500.

It would be unfair to Lindon Print to adopt the conventional method of assessing loss of goodwill by reference to the average net profit over a number of years prior to eviction because those years do not represent the potential of the two companies. It is implicit in the evidence of Mr Bonser that he, too, rejected those years as the basis of assessment. I regard the actual sale of boxed games (in value £150,000 and £140,000 respectively) in 1982 and 1983 as quite remarkable.

I think it probable that the sales of boxed games in those years would have been even more impressive if there had been no compulsory purchase, because then Mr Hughes would have been able to devote all his energies and talents to his new enterprise; his costs of production would have been less than if outside printers had to be used; his financial problems might well have been eased and loans more readily forthcoming if he had freehold premises to offer as security. If there had been no compulsory purchase the chance that electronic games would have been available for sale as early as 1983 would have been greatly improved. Mr Hughes' enterprise in the absence of compulsory purchase undoubtedly possessed great potential.

It appears to me that the Lands Tribunal, within the context of the evidence called before it, has a wide discretion as to the way in which compensation for loss of goodwill should be assessed. In the very special circumstances of the present case very special and unusual methods of valuation are called for. In those circumstances I regard the approach of Dr Gillhespy in his Appendix I and his capitalisation of excess profits ascertained therein as being valid. Mr Bonser thought so too. The important question, however, is to what extent I ought to accept the sums to which that approach is applied, namely the figures which emanate from Mr Hughes.

In the nature of things there cannot be certainty that the figures, more particularly those relating to the later years, would have been achieved. I think it not impossible that they might have been achieved, but allowance must nevertheless be made for the possibilities that there might have been a setback in trade or a fall in demand or a dip in profits for any other reason. It is right, therefore, that Mr Hughes' enthusiasm should be further tempered by a sense of realism and caution. There is no means by which that can be done adequately save by a subjective judgment. The Lands Tribunal has power to assess compensation for loss of

goodwill by making a robust decision: see the decision of the President in *W Clibbett Ltd v Avon County Council* (1975) 237 EG 271, [1976] 1 EGLR 171. This is eminently a case in which that power should be exercised. Adopting that course and doing the best I can in all the circumstances I award to Lindon Print by way of compensation for loss of goodwill the sum of £125,000.

Compensation for direct costs of eviction. These claims appear in items 47(b) to 52 of the Scott Schedule. The items refer to damaged printing stock, redundancy payments, payments in lieu of notice to dismissed employees and the purchase price (£9) of a book on compulsory purchase procedure. I disallow the last mentioned item but allow the remainder of the items in these claims in full and award to Lindon Print compensation in the sum of £2,310.

Compensation for directors' and other expenses incurred in the preparation of the claims. As to item 53 of the schedule, it appears that the expenditure claimed of £600 in 1980 was not referable to the preparation of any claim by Lindon Print and I disallow that sum. As to the claim in that item for 150 hours at £40/hr, I allow 135 hours at that rate, namely £5,400.

Item 54: the expenditure in this item, apart from 40 hours in 1982, appears to refer to periods after the date (May 21 1982) of the reference, but I propose to deal with the claims under this item relating to 1982 and 1983 by way of compensation. I allow 60 hours at £40/hr, namely £2,400 for 1982, and 90 hours at £40/hr for 1983, namely £3,600.

I understand that the claim under this item, for 1984 for £20,000, to refer at least in part to Lindon Print's claims against the district council in the Lands Tribunal and the High Court and I am unable to sever such part (if any) of that claim as relates to the current proceedings. I accordingly leave that claim and any claim for expenditure in 1985 (mentioned but not quantified in item 54) for reconsideration, if desired, on any taxation of costs. The same course is possible with item 55 (accountancy charges), which is also unquantified.

Item 56 refers to legal expenses and, I believe, estate agents' fees, all incurred after the date of the reference, “additional costs” (unquantified) and surveyors' fees. Save as to the last-mentioned matter I make no award. The other matters in item 56 may be reconsidered on any taxation of costs.

The aggregate of my awards in respect of items 53 to 56 is £11,400.

The grand total of my awards to Lindon Print is £201,410. I award that sum to Lindon Print together with their surveyors' fees on Ryde's Scale.

Campus Martius' claims

It is unusual for costs of two removals by a displaced company or person to be ordered to be paid by an acquiring authority. However, Campus Martius was evicted at an unseasonable time of the year, which made it the more difficult, without serious interruption of trading, to obtain suitable permanent alternative accommodation. The company quickly obtained temporary accommodation and in due course the landlord required possession. The possibility that temporary accommodation would be taken and that possession would be required was foreseeable at the time of the eviction. In my opinion both moves were the direct consequence of the taking and the authority must pay for both.

I allow the following sums:

(1) Costs of the removal from Yate Street to Stirchley:

Item	£	*Item*	£
1	250	8	69.86

2	139	9	182
3	60	10	60
4	1,600	11	402
5	25	12	112
6	725	12(a)	185
7	20	13	nil
7(a)	20	14	80
			£3,929.86

(2) Costs of the removal from Stirchley to Stratford-upon-Avon:

Item	£	*Item*	£
15	nil	18	304
16	75	18(a)	257
17	500	19	nil
		20	nil
			£1,136

I award to Campus Martius compensation in the aggregate sum of £5,065.86.

By consent, I order that the West Midlands Police Authority be joined as a respondent to this reference. I am also asked to record that that authority, through Mr J M Kilbey, solicitor, appearing here today, has agreed that the amounts of my awards herein shall, subject to any appeal against my decision, be paid by that authority.

By consent and the West Midlands Residuary Body concurring, I order that:

(1) The acquiring authority and the respondent shall pay the claimants' costs of this reference, such costs if not agreed to be taxed by the Registrar of the Lands Tribunal on the High Court Scale of Costs.

(2) The claimants' costs shall include such costs as would have been allowed if the work done by Mr Hughes on behalf of the claimants and the disbursements made by him, between January 1984 and June 1985, had been done or made by a solicitor on the claimants'

behalf PROVIDED that the amounts to be allowed in respect of any item of such work shall be two thirds of the sum which would have been allowed in respect of that item if the claimants had been represented by a solicitor.

(3) The claimants' costs shall include costs incurred in the reference by reason of Birmingham City Council being added as a party to the reference.