

*GUEST SPEAKER:-
NICHOLAS CHEFFINGS – HOGAN LOVELLS
"VALUATION IN A LIMITED MARKET"*

*QUESTION TIME**

*WITH RICHARD BEAMER-COMET,
TIM HAYNS-PRUPIM,
JEREMY GOOD-CUSHMAN & WAKEFIELD AND
MARIE BUSFIELD-MASON & PARTNERS*



**Mandrake Club, Bruton Place, London W1
Thursday 6th May 2010 (from 6 pm)**

2.5 C.P.D. HOURS

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AGENDA

- 5.45pm Guests Arrival
- 6.00pm Introductions (RAL)
- 6.15pm Nicholas Cheffings – Hogan Lovells
 “Valuing in a difficult market”
- 6.45pm Question Time (Chair RAL)
- Panel Members;
- Richard Beamer – Comet
 Tim Hayns – PRUPIM
 Marie Busfield – Mason & Partners
 Jeremy Good – Cushman & Wakefield
 Nicholas Cheffings – Hogan Lovells
- 8.25pm Quiz (PH)
- 8.30pm Closing AOB (RAL)
- Refreshments

Accessible Retail Professional Evening

Valuation in a Limited Market

6 May 2010

Nicholas Cheffings, Partner and Head of Real Estate Disputes, London



The Willing Tenant Conundrum

- When the market for the property is dead or dying
- And the actual tenant may or may not be interested if it were not already in occupation
- And there is no other identifiable interest in the real world
- Who is the hypothetical willing tenant?

Assumptions and Disregards

- Assume vacant possession
- Disregard the fact that the actual tenant has been in occupation of the demised premises
- Disregard any goodwill attached to the demised premises by reason of the actual tenant's business

The Pre-Review Date Position

- The premises have been occupied
- The tenant has been in occupation
- There is no assumed stigma from the assumption of vacant possession
- There is no assumed enhanced value from the actual fact of occupation by the real world tenant

FR Evans (Leeds)

- The willing tenant is “an abstraction”
- A completely fictional person who is actively seeking premises at the review date with needs which the actual premises could fulfil
- A “willing” tenant
- There is at least one willing tenant
- The rent results from fair and friendly negotiations

The Real World Overlay

- Evidence of fact can establish that competitors would not be interested at the review date
- Evidence of fact can show that the actual tenant would not have been interested had the premises been available and it was not already in occupation

The Actual Tenant

- If the actual tenant might have been interested at the review date, the actual tenant could be contemplated as a hypothetical willing bidder
- However, this does not automatically mean there are two interested parties – there could still only be one willing tenant
- BUT the hypothetical willing tenant does not have the personal characteristics of the actual tenant which might otherwise influence the level of rent which he would be willing to pay (*British Airways v Heathrow Airport*)
- He is “an abstraction”

The Level of Demand

- Evidence can be given as to whether competitors would or would not have been interested
- Evidence can be given as to whether the actual tenant would or would not have been interested
- If so, there is at least one willing tenant (and possibly more) and the rent to be paid must be reflective of that demand
- But, remember there is **ALWAYS** at least one willing tenant
- The task is to assess the strength of demand

No Demand Scenario

- If the evidence in fact displays no plausible real world bidder, it has to be assumed that a hypothetical person exists
- The rent to be paid by that willing tenant must reflect a rent to be agreed with a willing landlord in fair and friendly negotiations
- The willing tenant will not pay more than the market requires
- But the willing landlord will not accept less than he thinks he can receive either
- It is a legal reconstruction of the negotiation which happens on the grant of the lease

The Supply and Demand Equation

- In theory, if there is no identifiable demand, the willing tenant may not have to pay much in order to secure a letting
- But it has to be enough to make the landlord also willing
- Neither are desperate
- The availability (or otherwise) of alternative premises may be a factor
- It is not a "one way street"

No Comparable Evidence

- In the absence of transactional evidence (showing demand), the comparable evidence is still the best marker e.g. agreed reviews
- Failing that, it is about informed valuation judgment
- Wider market considerations? – availability of capital to tenants, need for rental income to meet LTV ratios?
- But these can only be generalities because the hypothetical willing tenant is an abstraction

Summary: Finding A Market Rent

- There is a willing landlord who is not desperate
- There is a willing tenant who is not desperate
- There is a property which meets the willing tenant's requirements
- There is a lease which suits both parties
- Market demand for the property influences the rent payable
- Equally important can be a lack of supply of premises meeting the willing tenant's needs
- The task is to find the balance between two willing parties which reflects all market conditions

The Final Valuation

- The absence of obvious demand need not mean a rent being fixed at well below the passing rent
- The concept of "no demand" is unreal - it is about deciding "at what rent?"
- It ought to mean greater investigation of comparable evidence – eg was a rent agreed elsewhere a result of competition which is unlikely to exist on the review premises?
- If a relevant comparable was of premises not fought after, it ought to be evidence of a rental bid by the “unopposed” willing tenant
- Never take comparables at face value. Always assess their true comparability
- But do not over-complicate the exercise
- The hypothetical scenario merely attempts to describe the real world

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SOURCE OF QUESTION	QUESTION
<p>John Bath – Gilbert Bath (and Guy Allan)</p>	<p>To Nicholas Cheffings;</p> <p>In a restricted market does the willing landlord/willing tenant assumption artificially affect the level of open market rent achieved at review?</p> <p>then panel and audience</p>
<p>Doug Stevens – Douglas Stevens & Co</p>	<p>To Panel</p> <p>Much emphasis is placed on the concept of a willing tenant but limited emphasis is placed on the concept of the willing landlord. In <i>Evans v English Electric</i> the actions of the willing landlord are qualified as follows -;</p> <p><i>The willing landlord cannot press his demand (for rent) to the point at which the willing tenant ceases to be willing.</i></p> <p>In a market where tenant demand is limited and a landlord is obliged to effect a letting on the valuation date is not the willing landlord`s position more relevant than the willing tenant`s position?</p> <p>then audience</p>
<p>Simon Quick – Green & Partners (and Ian Campbell)</p>	<p>To Panel</p> <p>What is the view on the suggestion of the necessity, now in some Arbitrator's Directions, that the consent of all 3 parties to an Arbitration is required before the Award is admissible?</p> <p>To audience</p> <p>Does the Arbitrator in a different dispute have the power to exclude evidence on this ground?</p> <p>Should the original parties have the right to refuse publication of an Award?</p>
<p>Peter Hemens - CWM</p>	<p>To Panel</p> <p>Every year we discuss the analysis of incentives. Are we any closer to agreement?</p>



ADDITIONAL QUESTION IF TIME?	
Nigel Bagge – Green & Partners	<p>Can a Calderbank offer be considered good evidence of value to test the veracity of an ensuing arbitration award?</p> <p>Should Arbitration Awards be weighted by reference to Calderbank Offers?</p>
Gareth Jones – Pets At Home	<p>Why do third party fees not reflect the usual commercial rate of what they would charge a client to undertake the work?</p> <p>RL to ask panel on this and general Arbitration process (cost, time taken, other concerns/issues)</p>

Guess The Baby Arbitrators

For a chance to win a "prize" complete and return to Louise

YOUR NAME:-

PHOTO

ARBITRATOR'S NAME

A)

B)

C)

D)

E)

F)

G)

H)

I)

J)

K)

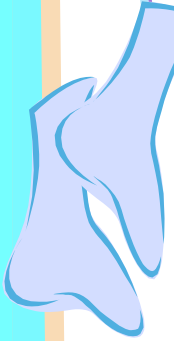
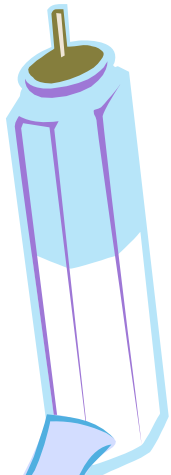
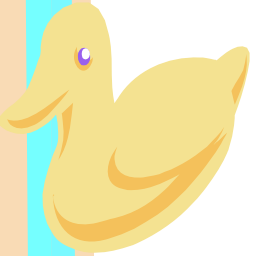
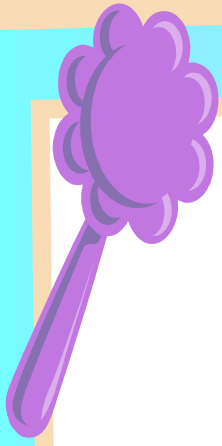
L)

Tie Breaker

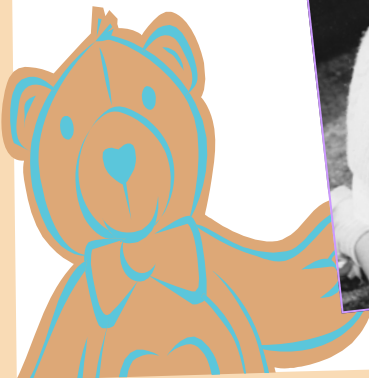
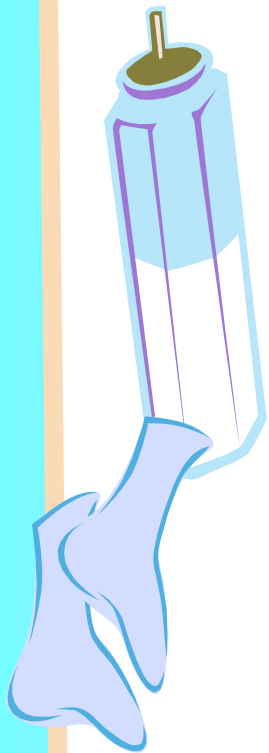
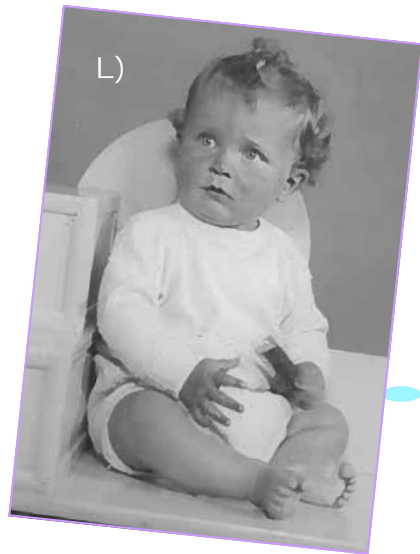
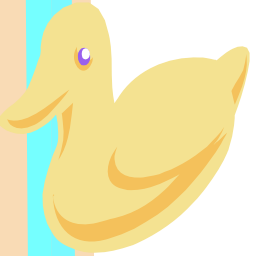
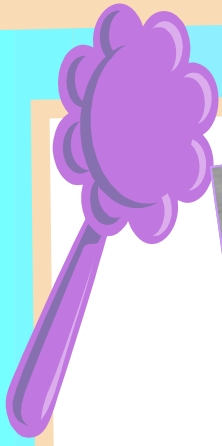
In the 2010 edition of The Definitive Guide to Retail & Leisure Parks the total UK retail warehouse accommodation floor space (sq ft) was stated as being?

If you need help look on page 4 for a list of possible Arbitrators.

Guess The Baby Arbitrators



Guess The Baby Arbitrators



Guess The Baby Arbitrators

Some possibilities

Ashworth
(Ashworths Chartered Surveyors)

Bagge
(Green & Partners)

Baker
(Stephen Smart & Co)

Bath
(Gilbert Bath)

Burbage
(Blackfriars Property Group)

Burgin
(Phoenix Beard)

Busfield
(Mason & Partners)

Butt
(Lambert Smith Hampton)

Campbell
(Chase & Partners)

Chase
(Chase & Partners)

Cheetham
(Cheetham & Mortimer)

Clark
(Hartnell Taylor Cook)

Crofts
(King Sturge)

Dennant
(Ashwell Rogers)

Dunkerley
(Colliers CRE)

Farrant
(Phoenix Beard)

Feltham
(Mark Feltham & Co)

Gibbons
(David Honeyman & Assoc.)

Good
(Cushman & Wakefield)

Honeyman
(David Honeyman & Assoc.)

Hope
(Mason & Partners)

Hulme
(King Sturge)

Newman
(Gilbert Bath)

Oates
(GVA Grimley)

O'Hanlon
(King Sturge)

Pearce
(Gilbert Bath)

Quick
(Green & Partners)

Richardson
(Sanderson Weatherall)

Rodd
(Mason & Partners)

Salway
(Salway Bradbury)

Simpson
(Wilkinson Williams)

Stevens
(Douglas Stevens & Co)

Thank you to all those Arbitrators who provided photographs.

Guess The Baby Arbitrators

THE ANSWERS

PHOTO	ARBITRATOR'S NAME
A)	Douglas Stevens—Douglas Stevens & Co
B)	Richard Ashworth—Ashworths Chartered Surveyors
C)	Nigel Bagge—Green & Partners
D)	Graham Chase—Chase & Partners
E)	John Bath—Gilbert Bath
F)	Marie Busfield—Mason & Partners
G)	Alan Gibbons—David Honeyman & Assoc.
H)	Martin Rodd—Mason & Partners
I)	Stephen Yarnold—Yarnold & Partners
J)	Paul Hope—Mason & Partners
K)	Ian Campbell—Chase & Partners
L)	Paul Simpson—Wilkinson Williams
Tie Breaker	172.00 million square feet

