

STATES OF JERSEY

Corporate Services Scrutiny Panel Lime Grove House: Failure to Complete Transaction

THURSDAY, 8th SEPTEMBER 2011

Panel:

Senator S.C. Ferguson (Chairman)
Deputy D.J. De Sousa of St. Helier
Deputy C.H. Egré of St. Peter

Witness:

Mr. R. Law

Also present:

Ms. K. Boydens (Scrutiny Officer)
Ms. S. McKee (Training Scrutiny Officer)

[10:06]

Senator S.C. Ferguson (Chairman):

Thank you very much indeed for coming in at such short notice in your professional capacity. We have asked you here in your professional capacity since you attended the whole of the hearing yesterday. First of all, a bit of housekeeping, the health warning.

Mr. R. Law:

Thank you.

Senator S.C. Ferguson:

I wonder if, for the purposes of the transcribers, you could give your name and position.

Mr. R. Law:

I am Richard Law. I am a chartered surveyor and that is in this case a fellow of the Royal Institution of Chartered Surveyors for some 35 years or more. I am here as a consultant who practises on my own account and as a consultant to the practice that I was previously a partner and senior partner of for over 25 years as senior partner. That practice is a firm of chartered surveyors and property consultants. In terms of the matters that are relevant to this hearing, that I consider to be relevant, I am a past president of one of the divisional councils of the Royal Institution and I was a full member of the council of the whole institution for a number of years. I was a member of the

Royal Institution of Chartered Surveyors President's Advisory Group on Arbitrations. That group was responsible for monitoring, on behalf of the president, the performance and appointment of chartered surveyors as arbitrators and that arises from most commercial leases which require the President to appoint an arbitrator to determine the rent in the event of the parties failure to agree. The R.I.C.S. (Royal Institution of Chartered Surveyors) also established, through the advisory group, the need for guidance notes. That was for arbitrators and independent experts and I was part of the original process in the production of those, initially as drafting elements of them and afterwards reviewing them before publication. In addition, I was a founder member of A.R.B.R.I.X. and it is that that is responsible for coaching, training and monitoring the performance and ensuring that the standards of those practising members giving evidence or Arbitrator and Independent Expert is such that they should be appointed by the president. That again enabled me to be very closely involved with that group because I was one of those that was mentoring and delivering papers, in particular to the commercial practice division on reasoned awards. I worked closely with, throughout that time, the head property chambers, that is to say U.K. (United Kingdom) based, of 11 King's Bench Walk, more recently Falcon Chambers. The guidance to all valuers for rent reviews was in fact published by the then lead of chambers Ronald Bernstein QC, and more recently Kirk Reynolds QC, has been refreshing it with the support of others. I have a very close understanding of the issues that may need to be brought to bear in this particular instance.

I was a member of the Lord Chancellor's Panel of Arbitrators and that was an appointment for a considerable number of years until the restructuring of how the law is despatched through the courts.

I was senior managing agent for the Crown Estate Commissioners and responsible for Wales, the West of Severn, Taunton and Dunster Estates, and that was an office I held for 9 years.

I am a member of the Institute of Asset Management.

Having dealt with that as qualifications that I think are relevant, what sort of work and what sort of clients? Well, my role has tended to be that of leading a team of skills, and where the skills were not to be found in my practice it was knowing the person who can, in other words to complement and enable a composite picture to be presented to a client.

What clients? Well, one of the first outsourcings of property services was Buckinghamshire County Council. We dealt with that for a considerable number of years until effectively their portfolio of surplus property was exhausted, in other words they went through a complete transformation I was actively involved in that. Defence Estates were another example. East Midlands Electricity, important work with the utilities. That again was a complete restructuring and transformation, exiting surplus property once East Midlands Electricity decided what its purpose was. Surrey County Council, another important county, and that brought me into direct involvement with a

number of property issues that could be comparable to the situation here and interestingly in relation to Terminal 5.

I have mentioned the Crown Estate, and add private landed estates, where my role is basically to ensure that the estate, that is to say the property portfolio, is sustainable in perpetuity. So that requires demand or challenges to protect revenue on the one hand and capital on the other. Wolverhampton City Council is another more recent example and that, of course, is an area in the West Midlands that is desperate for regeneration.

The work that I have been involved includes risk analysis, project management, strategic client management and compulsory purchase work in relation to such properties.

[10:15]

I do apologise for going on so long. I have not mentioned the fact that one rarely finds time to take lunch of any sort.

Deputy D.J. De Sousa of St. Helier:

It sounds like it.

Senator S.C. Ferguson:

Thank you very much. That is very impressive. One of the things that has been bouncing around with us is the question of value and price and I wonder if you would like to give us some background on that, please.

Mr. R. Law:

Yes.

Deputy D.J. De Sousa:

Sorry, Chairman, we have not introduced the rest of the people sat round the table.

Senator S.C. Ferguson:

I am terribly sorry. I was so impressed.

Deputy D.J. De Sousa:

Deputy Debbie De Sousa.

Deputy C.H. Egré of St. Peter:

Deputy Collin Egré.

Senator S.C. Ferguson:

And of course myself, Senator Sarah Ferguson.

Ms. K. Boydens (Scrutiny Officer):

Kellie Boydens, Scrutiny Officer.

Ms. S. McKee (Training Scrutiny Officer):

Sammy McKee, Training Scrutiny Officer.

Senator S.C. Ferguson:

Right, value and price. We have heard so many comments about it we would appreciate an expert's opinion.

Mr. R. Law:

Yes. Well, very simply open market value is crystallised at the point a transaction is completed. In the circumstances you are in is a question of valuation prepared by those competent, professional valuers who are asked to provide the open market value at a given point in time and to express that as an opinion of what they consider to be that the open market will pay for that property and achieve a completed sale. That does require 2 things. It requires a number of assumptions and that the buyer and seller have to be deemed willing. Now, there is a need to apply common sense. Sellers want as much as possible; buyers wish to pay as little as possible. The purpose of the assumption is to ensure that the rogue seller or buyer will not frustrate the deal to influence the valuer's determination of what the open market value is.

A buyer will determine what he is prepared to pay, he will consider: "What should I pay?" How does he go about that? In this instance the buyer is the States. The States have their own Property Holdings Department, has fully qualified leader together with a number of property skills, which include valuation they have a wide knowledge of their own portfolio and a general knowledge of the market. So they inherently have a knowledge that will contribute to the process of arriving at the appropriate figure. How do they support the internal view. They would commission a valuation and that valuation would be carried out on the basis that it was to take into account all the relevant factors of that property before arriving at a conclusion. That report should clearly set out all the assumptions made, the comparables and any other influencing factors to their valuation and a conclusion which they unequivocally state as the open market value. So that is the buyer. The buyer may decide not to bid that price but within the public sector it is necessary to be careful to ensure that the proper advice has been obtained to ensure that any price paid is reasonable and appropriate.

The seller on the other hand, of course, will do similarly and may well invite offers without stating a price or state a price that they want for the property.

So the next thing is how do we achieve this.

You have already had evidence before you where the valuation that is carried out is in accordance with 2 criteria, the criteria of the professional practice that is appointed but, more importantly, the individual who carries out that valuation must carry it out in accordance with what is regularly described as the red book. The red book is a weighty tome and gives clear direction as to what has to be taken into account to achieve the open market value. In this case rent is an issue and to look at the property. Now, how do they do this? Well, it is fundamental that any valuer before commencing the process should make a full inspection of the property, that is inside and outside, so to

understand what issues stand out to an experienced, competent professional valuer. Comparable evidence this is always difficult when the market we are in currently not many comparables are available so it puts the valuer on whichever side to task to take significant care in not only searching for comparables but, having found them, to ensure that they are comparable.

We have got the willing purchaser, the willing seller, we have then got to see and review that with the fact gathering and the analysis he has arrived at the appropriate figure. That certificate is binding upon him and his practice as representing what their view of market value is. So when people say: "Oh well, we are a particular type of purchaser or we are a particular type of occupier". You can take that as a given in the research that the valuer would carry out. He would ensure that he fully understands the purchaser's position on the one hand and he fully understands the seller's position on the other hand so that in those circumstances that will maybe influence the interpretation of the willingness of the parties and the position of the parties to the transaction. That, I hope, gives you a succinct overview of the approach and how you would support in this particular client, the States, using the Property Holdings Department's skills complemented, not only complemented by one valuation but in this instance there have been additional valuations. One would ordinarily be sufficient so I find that of interest but, bearing in mind the timescales we are speaking of, to have effectively 3 valuations is, to my mind, over the top and that is particularly the case when the headline figures were very similar.

The Deputy of St. Peter:

As we pointed out, again for the benefit of the transcript, you were here throughout the period when Mr. Izatt gave his evidence. What is your view on the way he indicated that valuation or price was calculated?

Mr. R. Law:

May I refer to my note? The note that I am referring is that I took at the time of the hearing. He indicated that he was providing an independent view and that view, he stated, was an informal opinion of value based on soundings within the property professionals. That statement of itself does not demonstrate that at the point of time he was approached to give a view the care and attention to the detailed matters that I have referred was carried out. It has become aware to me throughout the hearings that I have attended that quite clearly the actual detailed work that had been carried out, was clearly expanded upon, was found, as far as Property Holdings were concerned, to be thorough, well researched and supported where necessary by competent external resources, the valuation being one. That is until the time the case was removed from Property Holdings. At a time that was ticking fast and the concern being to pursue what was clearly the decision of the States in the round to go ahead and purchase this property Mr Izatt was brought in to suggest his view and conclude a price is too much would cause me grave concern. If I was the client in receipt of that view I would want to be doubly thorough and careful as to going to the next step.

The Deputy of St. Peter:

Just to clarify that in our own minds, the view that was being expressed, and you used the word “client” ...

Mr. R. Law:

Sorry, the States.

The Deputy of St. Peter:

In our discussions yesterday it was clear that the client on this occasion, albeit being the States, was specifically the Minister for Treasury and Mr. Richardson.

Mr. R. Law:

Yes, as the individuals.

The Deputy of St. Peter:

As opposed to Jersey Property Holdings.

Mr. R. Law:

Yes. Jersey Property Holdings are providing a service to support the Minister for Treasury and Resources. That places the Minister, of course, with 2 hats, Treasury matters fiscal and financial, and Resources, matters property. The Minister quite properly referred to his duties and his responsibilities. He also had realised that, having responsibility for Resources, there should be a Deputy Minister appointed for Property Holdings to report to in a structure that was determined by Treasury and Resources. It was also, from my gleaning of the evidence before the panel, that it should be via the acting C.E.O. (chief executive officer) I think is the term that was used. So that is synonymous with the 2 names that you have referred to and that is what I have understood the structure to be.

At this point there was an independent view based on informal opinion and soundings coming up with a very different answer.

The Deputy of St. Peter:

Just to confirm, this is at a point where Property Holdings had been removed from the equation.

Mr. R. Law:

That is so, it was when, in the light of Mr. Izatt’s contribution he came up with a price range of 6.5 to 7.5. I think he said 7.5 on one occasion and 7.6 on another, but the range was 6.5 to 7.5 in terms of value. Interestingly, the valuations that had been commissioned formally to arrive at what was the open market value, Property Holdings themselves achieved, if you like, a result at £8.75 million.

[10:30]

Paribas PNB were commissioned to do that valuation, £8.8 million. CBRE on a refreshed valuation came up with a higher figure and Drivers Jonas, who were called in even later, came up with £8.45 million.

The Deputy of St. Peter:

These firms that you have mentioned that carried out these valuations, what is your view of their competency?

Mr. R. Law:

Their competency? I have no question to raise about their competency. They are well recognised, well experienced practices who have valuers who one would readily appoint to give an independent, impartial and correct view of their opinion of open market value.

Senator S.C. Ferguson:

You mentioned refreshing valuations. Is this common practice?

Mr. R. Law:

It is indeed, because you refresh as time goes by. There was a history before the economic collapse, if you like, in property values that refreshing used to be in only one direction, ever onward and upward, and the results that were coming through on transactions, because there were many, were clearly indicating it was difficult for valuers to keep up. Most recently the opposite has been true, but that does not apply here because your market is different.

The Deputy of St. Peter:

Could you explain how the market is different here?

Mr. R. Law:

The market is different in that it has not suffered in the way that in the U.K. in particular, to narrow it down, the market values have fallen. That has not happened here.

Senator S.C. Ferguson:

As obviously a consummate professional, what would be your approach to such a project as the purchase of Lime Grove?

Mr. R. Law:

Again, observing the evidence, of course only part of which is Mr. Izatt's contribution, his contribution was most important because he explained his approach to it. Having used the informal opinion, which his own opinion was supported by his reference to soundings in the property profession, he had identified 2 issues: the ability of the police to fit into the building and the price. On the price he was very clear minded that it was too much and that was evidenced in his figures that he gave us, the range of figures which I have already referred to. He then gave a glimpse of perhaps how he had arrived at his view, which he stressed was not a valuation, and that was that he looked at the building and said: "It is 10 years old." It is interesting that the police authority have taken 10 years to achieve what is a model for their occupation of a new building. I have to add that as a firm who have done and do still do

work for police authorities in the U.K. it is not unusual because the dynamics of central government edict and local authority edict have dictated winds of change about how police should deliver their support to communities. I make that as an observation because it may look rather strange that it has taken so long. It does not surprise me. The 50-year life was mentioned as the life of the building, so that is the first question: is that building expected reasonably to have a life of 50 years? I am certain that when it was built and still to this day it has a much longer life than that. Then he had applied the concept of a discount to that price, in other words 10 years is 20 per cent affecting the value. So that is something that he took into account. The question is: is this normal practice to arrive at market value? No, it is not because, as I have said already, the professional valuations that have been carried out take into account all the relevant factors and the relevant factor here is the condition of this building. It is not about unexpired life term of a building like this. This is a fairly straightforward office building. So that is the first issue I would raise and quite frankly I would not agree with that approach. Then I think the other most relevant thing on price were the words of "distressed" - now, people get distressed, people get stressed - and words like "forced sale" and words like "fire sale".

The Deputy of St. Peter:

Just to clarify, these would all be indicative of a vendor wishing to sell no matter what?

Mr. R. Law:

Yes. I am mentioning all these terms because it is usual to hear them bandied about. Now, what we are looking at here is what is necessary, and this is part of the proper research that would be done, what is the state of the seller. Distressed (forced and fire, and I know that these terms were not used), but a distressed sale is a reflection or suggesting a situation that is applicable to the seller. Proper research would readily identify that that is just not the case here. The fact that the seller has not sold or let for 10 years indicates that the building of itself is sound, in the first instance, that is following my inspection, but more importantly he was in no great rush to let or sell unless the terms were right for him. So the idea of distress, forced or fire sale is irrelevant. The purchaser is someone who can take his time to achieve the deal that he wants providing he is willing, and he demonstrated that to the States, just as the States, in the first instance, demonstrated their willingness to treat. To put this into context, however, if this has been the situation that we find routinely elsewhere in the United Kingdom there are portfolios of properties ... and I have just completed, while having some leisure time here, reviewing a portfolio that was standing in at in excess of £120 million and actually, because it has been put into the basket where those that funded it, i.e. the banks, it is looking as though, in its distressed state, it will come out at hugely less. That is what is distressed; this is not like that at all. So it is wrong to even imply that that should be relevant to this particular case.

The Deputy of St. Peter:

You just commented there, which I picked up on, you said following your inspection of the building. We noted yesterday that Mr. Izatt stated that he had not visited the building.

Mr. R. Law:

I found that strange that he should not wish to do that in the first instance before expressing an independent view.

The Deputy of St. Peter:

The comments you made sounded as though you had visited the building yourself.

Mr. R. Law:

I had indeed. I asked for permission from the landlord's agent, the owner of the building's agent, and that was arranged for me and I inspected the building yesterday afternoon. Inspection means that I looked around the outside, the car park and the inside through all the floors.

The Deputy of St. Peter:

Just to go back to I think one of the first statements you made with your professional qualifications, that included that of surveyor.

Mr. R. Law:

Yes.

Deputy D.J. De Sousa:

Can I jump in there? We were told in an earlier hearing that there were problems with the building, that there had been water ingress. What is your opinion on that? Does that devalue the building? Is it structural?

Mr. R. Law:

I think one of the issues that caused me to consider it essential for me to have a look at the building was the question of dilapidation, which was the term used by, if I can say, the States more recently, that is since Property Holdings ceased to have involvement, the word "dilapidation", and the word that was used previously by the vendor, "snagging". To be helpful, may I also add that the vendor considered that the top side of snagging was £50,000 and the States, after the transfer from Property Holdings, produced a figure of £400,000. So there is a huge difference there.

The Deputy of St. Peter:

Can you explain that disparity?

Mr. R. Law:

I cannot explain how either party arrived at their figure but it was sufficient for me to be concerned about what one might find on a straightforward inspection.

Deputy D.J. De Sousa:

So you have now done that?

Mr. R. Law:

I have.

Deputy D.J. De Sousa:

And ...?

Mr. R. Law:

Yes, it is true to say that damp, there is evidence of that in various parts of that building. The majority of it, if I say to the HSBC side, is running through one corner through the fenestration, or not the fenestration itself but due to the fitting of it, and there is clearly evidence of that to be found. There was some peeling of paintwork, which is purely a prime coat as opposed to a finish coat, where that was peeling which suggests possibly there is an issue there. But having identified it in a number of places, do I consider it to be material? The answer is I did not. I would, of course, ensure that the landlord or the tenant, in other words if it is going to be a let situation, that it is very clear in any valuations as to who is going to pay for it. So my inspection, what did I find? Well, I found what was clearly the need for cleaning the outside, attention to the roof covering and the overhang. That was purely maintenance in terms of painting or resealing. But there was no issue that caused me great concern. There was evidence of seepage from what is the compound for collection of the rubbish from the residential element and that is something that would require looking at, but in real terms I did not find anything to give grave concern and hence to have some comprehension as to why a figure of £400,000 is appropriate and relevant as compared with a figure of £50,000.

The Deputy of St. Peter:

How long have you been over in Jersey?

Mr. R. Law:

Sorry?

The Deputy of St. Peter:

On your visit on this occasion how long have you been over in Jersey? I will give you the relevance in just one second.

Mr. R. Law:

I came over on a Sunday, goodness gracious me ... Sunday week.

The Deputy of St. Peter:

So you will have noted recently that we have had some very heavy weather.

Mr. R. Law:

No, I would consider that this particular issue in part would have related to a longer period. We are talking 10 years here.

The Deputy of St. Peter:

The point I am trying to get to here is with the wind and weather and rain that we have had recently if there were serious leakage problems would you have expected to have seen them on your visit yesterday?

Mr. R. Law:

Yes.

Deputy D.J. De Sousa:

Did you see any evidence?

Mr. R. Law:

Yes. I found the condition of the common parts, what I mean by that, it is rather a misleading term; the lifts, the facilities, the utilities, the toilets, the wash facilities, the cupboarding, the central core, the access from ground to roof level, 4 floors, was again of very high standard. It was fitted out. So that is something you may or may not find at the point you would normally commission either the landlord or the occupier to carry out a fit-out. In other words, there is a decision to be made who does what and who pays for it.

[10:45]

The professional valuations that have been carried out take all of this into account, because the thing that quite often happens is the landlord will have fitted it out and if the landlord has paid for that then it will be reflected in the value. If the tenant fits it out he will reflect it in the value and the landlord will accept that. It is who pays. Quite often you will find a building that for all intents and purposes is appropriate and suitable but it requires the tenant to invest money over and above, that is additional improvements, enhancements, call it what you will. In those circumstances, of course, it is important to understand that the buyer does not pay twice. All of this is made clear in the valuation reports that have been carried out so there can be no confusion in the minds of those that have carried out the valuation.

The Deputy of St. Peter:

Again just to clarify, prior to the Treasury Department divorcing itself from Jersey Property Holdings and taking on the negotiations themselves, the only advice that would appear to have been given has come from Mr. Izatt with regard to valuation?

Mr. R. Law:

I think in some of the evidence there were references to other persons. None of these were named so I would have interpreted what I hear. My view of what I heard was that there were a number of persons who had given views which had either been consolidated in Mr. Izatt's contribution as evidence or they were treated separately. I say that because Izatt in his evidence suggested an offer should be made of £7.5 million. I think that is what he said. It is interesting that the way it proceeded was that Gothard was instructed to say: "The price is £8.25 million. That is the price we are prepared to pay."

Deputy D.J. De Sousa:

There is some vagueness around that, as well, is there not, from previous hearings that we have had?

Mr. R. Law:

Yes. I felt it was exceedingly difficult for any valuer to accept an instruction where you are not able to negotiate, you are not expressing an opinion of value but you are told "the offer is ...". It was also based on certain assumptions again that the dilapidations figure was considerable as well as the fit-out figures but it is a very difficult state to find he, as a professional, for him to go into that situation. I have not mentioned the word "negotiation" and negotiation is a fundamental element to 2 parties willing and able coming together. But having said that, it is still very much in my mind that this is a critical, high risk situation that was being contemplated by the States.

The Deputy of St. Peter:

Could you explain where you see the high risk? Are you talking high risk of losing the deal, high risk if the deal did not go through?

Mr. R. Law:

I am saying the high risk is based on the fact that irrespective of some of the considerable evidence that you have it is apparent to me with my background and experience that the States were committed to and wishing to purchase, the police, with rigorous work carried out, risk workshops, analysis, space planning, et cetera, all the detailed work that is necessary, had satisfied themselves it was a good fit, irrespective of what has been said, and they realised and found the opportunity for them to place their support to their premises and fit into the new building. There seemed no doubt in my mind that that was doable and achievable at a cost that was reasonable.

It was not clear to me from Mr. Izatt's evidence there was mention of cells, I think he mentioned in the giving of his evidence, and if that was so then that to my mind is not what this building is about. This building is to provide the administrative support and therefore if that is a factor that was taken into account then it is quite clear that some of the costings would be very different.

Senator S.C. Ferguson:

If you are in such a project, you are still negotiating the price, would you expect to go into considerable detail and expense of the floor plans before you actually get hold of the building or would you make reasonable approximations?

Mr. R. Law:

I would consider that the first part of the exercise, and this exercise, was carried out correctly and appropriately and that was supported by the evidence of Barry Taylor who repeatedly answered the question that all the necessary work on space planning, et cetera, had been carried out correctly.

With that in mind, the question then arises that once opinions which contradict the flow of the independent professional answers that are before the States,

where do we go? We have got a view coming in that is very differently: "You are about to pay too much" and because the risk of losing the opportunity, when quite clearly there was a strong swell of commitment for it, then it should have been the first port of call before going anywhere else would have been to revert back to Property Holdings. I appreciate that an individual, it would appear, in Property Holdings had caused great concern to the Minister and Mr. Richardson and others within the Treasury and Resources Ministry. That being so, then the right person to revert to in this very delicate matter would be the head of Property Holdings, someone who is experienced, very wide experience of dealing with a series of transactions and fully understands the market and how it works from his wide experience. That would have been the first port of call.

It is interesting that the risk workshop and the workshops that were carried out pre the transfer (from Property Holdings) do not appear to have been supported, in other words such exercise was not done in terms of the due diligence of a very delicate situation when the view was that the figure was too much. In other words, was there a workshop conducted for that purpose to ensure that before any decisions were taken as to how to go forward, in other words: "We are going to put a lower price"? That does not appear, from my hearing of evidence, to have taken place. Significant risk escalation by virtue of the way that this was approached and hindsight, sadly, endorses this.

Senator S.C. Ferguson:

We have been discussing off and on exclusivity agreements. I am a sort of beginner in property. Can you obtain an exclusivity agreement without a conditional offer?

Mr. R. Law:

The answer is that you could by either exclusivity or lockout agreements. The exclusivity agreement, was for a particular purpose to achieve a deal and it was to commit the seller to the buyer to give time to work out detail of a number of differences. These differences in the scheme of things, based on a price of £8.75 million, were not huge and that shows again an endorsement of the willingness to treat by both the parties. The difficulty quite often is that the timescales overrun and this is particularly so, in my experience, with the public sector. The words "time is of the essence" are very difficult for the public sector to understand on the one hand and implement on the other, but they can and they do do it when the need is such. I am able to say that from my experiences elsewhere.

The set of circumstances that arose; as soon as the warning bells that there is other interest, then that would add to my alert and risk issues that they have already formed.

The Deputy of St. Peter:

Just to clarify, when you used the term "other interest", there were other potential buyers?

Mr. R. Law:

Correct, buyers or occupiers, because the owner had, if you like, taken an open approach as to whether to sell or to let and in each case he wanted the right party, whether it is the buyer or the tenant.

The Deputy of St. Peter:

Up to the point where we are all aware of this division that occurred when Property Holdings were removed from anything to do with the negotiations for Lime Grove, the process of making a conditional offer, which we are aware that it was conditional, and to achieve an exclusivity agreement actually cemented for the States at that time the potential to negotiate against any other finer detail?

Mr. R. Law:

Correct.

The Deputy of St. Peter:

Once that exclusivity agreement had been lost then, as I understand it with my growing knowledge of the subject, the vendor now had a more open field so if anyone else came in with a, I will use the term, better offer he had no moral issue with it and he could go with a new buyer?

Mr. R. Law:

I think that the vendor, in the history of the serious approach and commitment of the States through the police authority occupation, demonstrated that over a very long period of time. Now, that could be quite properly because there was no other interest. It may be that the Vendor considered it more appropriate to commit to the States. All of that is irrelevant because the exclusivity period endorsed that commitment and I understand that it may have even been extended, although that was done purely verbally. All of this says here is a willing seller. The States were indicating that. To go from that and make a further offer then you could have said why did not the States, in addition to making the deal that was put forward of 8.25, obtain an exclusivity agreement. It may well be that in those circumstances it was felt not appropriate. There has been no evidence given on that but it would be a reasonable thing to say. What was very clear in my mind is that this situation had moved from being one of, if you like, we can go at our pace as far as the prospective buyer is concerned to one that the risks were, if you like, increasing that there was going to be somebody missing out, the States would lose out on this, and that of course is what happened.

[11:00]

Deputy D.J. De Sousa:

There has been much play on the fact that the building was built some 10 years ago, it has never been occupied. In fact it has been called the elephant at the other end of the tunnel. We know that it is a building of shell and core and that it has not had a fit-out. The States, in their second tranche of dealings on Lime Grove, seem to have gone for the fact that the building has never been used, nobody is interested in it, to bring the costs down. We have been told extensively in hearings that because it is shell and core it was not

losing value, it was not costing anything to the vendor. In your experience and your opinion, shell and core, 10 years lying idle, is it going to devalue the property at all?

Mr. R. Law:

The answer is in the circumstances and the evidence that has been provided the indications were from the landlord, and Property Holdings did not demur from this, that £50,000 was a figure attributable to snagging whereas of course the States had a contra view, a significantly different view. The answer is ...

The Deputy of St. Peter:

Can I interject there just one minute? You are using the terms "States". The original element was the States, the initial view of the States was that it was whatever the dilapidations were. It would appear to be the view of an area within the States.

Mr. R. Law:

Sorry. Yes, I mean Property Holdings did not demur from the figure of the £50,000.

The Deputy of St. Peter:

And they were representing the States at that time.

Mr. R. Law:

Correct. I do apologise. The whole question is, first of all, if a building is not occupied how should you leave it if you are leaving it for 10 years. I would not have expected to find anything different than I found because the construction of the building is carried out to the level as I saw it and what I had expected to find. I could take a view that parts of the lifts and the work that was done to stairways was a higher standard than I would have expected to find. It could have been far more basic than that. So I would not have expected to find it any different and in fact if it had have been different, in other words fitted out at the time, then that would have been a cost because it would not be appropriate to meet today's standards and requirements and the fit-out of an office space is very particular to the occupier.

The Deputy of St. Peter:

So in effect there could be some advantage by an occupier taking over and make it fit their requirements rather than modify?

Mr. R. Law:

Yes, but in putting this to me I am going to suggest that all of this is not relevant. What is relevant is what the valuers, who were competent and experienced, are valuing. They are valuing what has been a building that was constructed 10 years ago and in a state as it was, so no more than has been done to it, and that is what they are valuing. As long as they are valuing that, all of these other issues are merely minutiae, detail, because we are talking about something of £8.75 million or £8.8 million or £8.25 million. In reality, the

valuer will take all of these issues into account, as I have said and now saying repeatedly, to arrive at the right figure.

The Deputy of St. Peter:

One of the concerns that I have, and I cannot understand it at all, is that it would appear that initially all the people who were working on this project had visited the building to value it, had visited it to assess its state, and yet at point of changeover, which I mentioned before, we now learn of a situation where Mr. Izatt, who spoke to us yesterday, had not visited the building and there appears to be a huge number of assumptions being made, without the detailed knowledge. I just find that incomprehensible.

Deputy D.J. De Sousa:

It is even more than that. The people that looked at it beforehand had the expertise, it was their field, and it seems as though the second part, the expertise, the qualifications are not there as well.

Mr. R. Law:

I do not disagree with your observations. I hope that in answering your questions I have made it quite clear that the methodology, the way in which this whole exercise is approached, is fundamental to getting the right answer. I accept that without impugning any of those that have given evidence, that unless that methodology and process is carried out correctly, then it would cause me, if I were to take a view of which evidence is preferred, I have to say that I would prefer where the detailed work has been done and carried out in the correct and proper way, whether it is independent valuations or within Property Holdings up to the point they ceased to be involved.

Senator S.C. Ferguson:

Just to return one minute to the exclusivity agreement, as I say, great play has been made of the fact that an offer was made without notifying the Minister. Would not, in your experience, requests for an exclusivity period without putting in an offer really demonstrate seriousness? I could go along and say I want an exclusive agreement to buy London Bridge.

Mr. R. Law:

You may get it.

Senator S.C. Ferguson:

I do not know what I would do with it. But without a figure in it, surely that demonstrates a seriousness of intent?

Mr. R. Law:

Yes, it does. I think that the exclusivity agreement is something that I have commended as being a clear indication of the willingness to treat of the 2 parties and commitment to the sale or purchase. The issue that I found most difficult to understand was that Treasury and Resources, clearly the Minister was very clear about his responsibilities and I endorse all that he had to say about his duties and responsibilities to the wider community. They also fell into 2 camps and, very sensibly, he dealt with his financial responsibility and

his resource responsibility, and in particular Property Holdings, by appointing a deputy, or a deputy was appointed if it was not in his gift. A deputy was appointed and there was a reporting line established for Property Holdings. It became clear from evidence, as I understood it, that someone had not briefed and kept the Minister appropriately informed. The conduit for Property Holdings seemed to me to be to be set down quite clearly in 2 ways. One is what I have already said, through the Deputy Minister, and the other was the role of the C.E.O.

The Deputy of St. Peter:

The accounting officer, I think you are referring to.

Mr. R. Law:

The accounting officer. Sorry, I do apologise for not getting your terminology correct.

The Deputy of St. Peter:

Same person but ...

Mr. R. Law:

Mr. Richardson, if I can identify it so that there is no misunderstanding about what I am saying. There are 2 persons who have a responsibility to the Minister to ensure that he is properly informed of work in progress, if I can put it that way. So I am seeing it very differently, because of breakdown in communication, is about more than one, and reporting lines, and that is a separate issue but it is how things have happened and that has added to the risk, because it would appear, from my understanding of the evidence - and it is subject to that qualification - that reporting by Property Holdings was as was originally instructed.

The Deputy of St. Peter:

There has been some indication that the cost of Lime Grove was set at £8.75 million but there was a view that a new build might be cheaper, which ...

Mr. R. Law:

Yes, it might be, but let us just understand as to how you can make that statement. First of all, you can only make that statement if you are going to address it as a comparable to the building in question. I am perfectly aware of circumstances in the current market conditions where developers, that is people building things, contractors who build, are squeezing out cost to fit market conditions. There are some classics of that, of how specifications are being downgraded to fit the market, and some of the instances of that are looking at phases of residential apartments. In other words, if you halve the thickness of a brick it will cost less. So I find those throwaway remarks of interest but I am not going to apply much weight to them.

The Deputy of St. Peter:

So that is tying basically to the quality of build?

Mr. R. Law:

Well, it is a product of, first of all, the build site value. If you go to an alternate site, what are the site conditions? I mean, there are sites that are contaminated, for example. So, there are additional costs other than the build costs.

The Deputy of St. Peter:

One of the arguments on costs, and this is going beyond what we have been talking about yesterday, when we are talking about a site like Lime Grove, apart from the building itself, surely the site itself has a value?

Mr. R. Law:

Yes, it does. The whole thing has a value, correct. So the answer is yes.

The Deputy of St. Peter:

So, if you were looking at a new site, it would not be just the build; you would have to take into consideration the site value as well?

Mr. R. Law:

Yes, correct. You have got to compare apples with apples. In this set of circumstances we are not actually comparing apples with pears, we are comparing apples with prickly pears.

Deputy D.J. De Sousa:

A very good analogy. You are known to the members of the panel here because you have been an adviser to the Corporate Services Panel.

Mr. R. Law:

Yes, I have. I have done that on 3 occasions.

Deputy D.J. De Sousa:

What is your experience and the number of times and the dealings that you have had when you have come to Jersey previously?

Mr. R. Law:

What is my experience? Well, it is a learning experience, as life is a continuing process of learning. It is an experience which has enabled me to get a wider understanding of critical issues within Jersey. I think that a cumulative process, without getting into the evidential detail of it, has caused me to reflect on some very different issues than material pounds and pence, but they are issues which do affect pounds and pence at the end of the day and they are cultural issues. Now, it is a given that, whether in local, regional, central or whatever form of government, politics have ... and rightly so, because people who represent the wider community are elected and they have to stand by the way in which they carry out their duties to the electorate and face re-election or otherwise. So I was finding that it was those issues that were coming to my fore, and increasingly so, in the time that I have been coming here. I must make it absolutely plain that I have a wide experience of cultural issues, of course, and the different behavioural patterns there are within local government and central government.

[11:15]

Each minister in central government, each local authority - in spite of them all being described as either counties, metropolitan boroughs or cities - do have their own ways. The successful ones seem to have the ability to, if you like, respond to the political - that is the electorate's - requirements, whether handed down from central government by impost or through the local decisions that are made. It is those that have the right teams in place that can, if you like, have the best chance of delivering. Those tend to be the ones that are not in stressed conditions at the present time, because they manage their processes better than others.

Senator S.C. Ferguson:

Thank you. One small point, I assume you are aware from the evidence that has been discussed so far that this particular transaction was part of a scheme whereby the police move here, the site they have vacated is used for something else, somebody else moves somewhere else, and so on. It was the start of a domino chain. Does it seem to you that this is a particularly complex sequence of transactions?

Mr. R. Law:

No. In fact, in the current climate it is more advantageous to find a particular event, which would be where the purchase and the move, is a catalyst to more commercial activity.

The Deputy of St. Peter:

This purchase has been described as a key event in that process, which has now been lost.

Mr. R. Law:

I do not consider that to be an unreasonable comment. I think it is a perfectly reasonable thing to say, because elsewhere (outside Jersey) one is looking for opportunities that are achievable, in the present climate, to do such things. So to have more than one, you can see that it is going to generate more activity and property transactions. It also will send a stronger message of confidence to the wider commercial community.

The Deputy of St. Peter:

So it would not surprise you, therefore, I would think, that during the risk workshop that was carried out the loss of Lime Grove was regarded as the highest cash loss risk to the States.

Mr. R. Law:

I am not in a position to say whether it would not be. What I can say is, yes, it is perfectly reasonable to anticipate it being a significant loss, bearing in mind the paucity of transactions in the present climate.

Senator S.C. Ferguson:

But it was not a particularly complex series of transactions?

Mr. R. Law:

No, not at all. If I may, not to get the food analogy ...

Senator S.C. Ferguson:

We keep being told it was terribly complex, you see.

Mr. R. Law:

Yes. Well, I find this a sort of “bread and butter” style of transaction, as opposed to an “out to lunch” transaction.

The Deputy of St. Peter:

A poor analogy. [Laughter]

Mr. R. Law:

To my mind, this really is what should be expected in the present climate, or what was routinely found in the previous economic climate, i.e. when it was ever onward and upward there was a rolling effect, the domino ... it was like a gathering momentum of snowball, but unfortunately it hit the wall and melted.

Senator S.C. Ferguson:

All right, thank you very much. Debbie?

Deputy D.J. De Sousa:

I just wonder if you could, in your experience, clarify for us: a written offer and an agreement to an exclusivity is not categorically binding, is it? Or is it?

Mr. R. Law:

No, because unless the terms or the requirements arising out of the exclusivity offer are resolved, it would fall away. In other words, it is a way of finding time, to sort out detail. We are not sorting out the heavyweight, the burden of the deal; that has been done, in principle.

Deputy D.J. De Sousa:

Would it, in your experience, be normal to do a written offer and possibly discuss an exclusivity to give yourself time to look at the whole offer?

Mr. R. Law:

Yes, but before one gets to writing, there is dialogue between the appropriate representatives, in this case the representative of Buckleys and the nominated representative of Property Holdings, and that dialogue is all about: “What are the issues we have got to settle to produce a deal?” On this Island, it will be quite clear to all the commercial professional practices as to how the States works, and against that knowledge they will understand why these requirements are needed. So in the circumstances, as long as the exclusivity agreement clearly identifies what has got to be done and the timescale it has got to be done in then there is no reason why a deal cannot be achieved.

Senator S.C. Ferguson:

It just remains for me to say thank you very much indeed for spending your time with us today. We have learned a lot, and we shall let you have a copy

of the transcript so you can make sure the ladies ... sorry, no, I have been told they are not all ladies, the folk who do the transcripts have got everything down accurately. Thank you very much indeed, Mr. Law.

Mr. R. Law:

Thank you. I hope that you will not consider the incident with the glass one that is now deemed a gift in my direction.

Senator S.C. Ferguson:

We will just put it in the book.

Mr. R. Law:

In which case I shall refund such immediately.

Senator S.C. Ferguson:

No, thank you. There was not anything else you wanted to say? I am sorry, I should have said.

Mr. R. Law:

No.

Senator S.C. Ferguson:

Nothing else you wanted to ...?

Mr. R. Law:

No, thank you.

Senator S.C. Ferguson:

Thank you very much indeed.

[11:21]