UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – valuation of maisonette – use as comparables of open market sales on estate subject to CPO – whether affected by blight – use of settlements – Delaforce effect – use of off-estate comparables – surveyor's fees – disturbance

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

OLUBUNMI JOHN	**Claimant**
and	
LONDON BOROUGH OF SOUTHWARK	**Acquiring Authority**

Re: 28 Wolverton,
Sedan Way,
Aylesbury Estate
London
SE17 2AA

Before: A J Trott FRICS

Sitting at: 43-45 Bedford Square, London WC1B 3AS
on
27 May 2014

Stan Gallagher, instructed by Armstrong & Co, solicitors, for the Claimant
Mary Cook, instructed by London Borough of Southwark Property Services, for the Acquiring Authority

The following cases are referred to in this decision:

Sachikenye and Others v London Borough of Greenwich CON/105/2006 and CON/18/2007 (unreported)
Joshua v London Borough of Southwark [2014] UKUT 0511 (LC)
Delaforce v Evans (1971) 22 P&CR 770
Lancaster City Council v Thomas Newall Limited [2013] EWCA Civ 802

DECISION

Introduction

1. This is a reference to determine the compensation payable to the claimant, Ms Olubunmi John, upon the compulsory purchase of her leasehold interest in 28 Wolverton, Sedan Way, Aylesbury Estate, London SE17 2AA ("No. 28") by the London Borough of Southwark ("the acquiring authority" or "the Council").

2. The reference arises following the making of a general vesting declaration on 23 July 2013 under the London Borough of Southwark (Aylesbury Estate, Wolverton 1-59) (No.2) Compulsory Purchase Order 2012. The parties agree that the valuation date is 21 August 2013.

3. Ms John claims the sum of £297,500 as the open market value of her leasehold interest. She also claims pre-reference surveyor's fees of £3,432 including VAT. In addition she claims what counsel described as "a modest sum to be assessed to reflect [her] out-[of]-pocket costs of moving, e.g. van hire and related expenditure, thought to be no more than a few hundred pounds."

4. The Council says that the open market value of the claimant's leasehold interest is £165,000 and that pre-reference surveyor's costs of £800 would be fair and reasonable. In addition the claimant's reasonable legal fees in conveying the property are compensatable. The Council makes no offer in respect of disturbance since it says that no proof of any expenditure has been submitted. The parties agree that a home loss payment of 10% of the open market value of the leasehold interest is payable.

5. Mr Stan Gallagher of counsel appeared on behalf of the claimant and called Mr Christopher Michael Avery FRICS FAAV, principal of Avery Associates, as an expert valuation witness. The claimant submitted a witness statement of fact but was not called to give evidence.

6. Ms Mary Cook of counsel appeared on behalf of the Council and called Mr Patrick McGreal MRICS, a principal surveyor with its Property Services Department, as an expert valuation witness.

Facts

7. No. 28 was a four bedroom maisonette located on the second, third and fourth floors of a five-storey residential block known as "Wolverton". Wolverton was of concrete frame and panel construction built by Laing of a proprietary system called Jespersen 12M. The block comprised 59 dwellings with garages on the ground floor.

8. Wolverton formed part of the council's Aylesbury Estate, a large residential development constructed between 1966 and 1977 comprising 2,759 dwellings and housing some 7,500 people.

9. The Aylesbury Estate is located south of Elephant and Castle in the Walworth district of Southwark. It lies between Camberwell Road to the west, Albany Road/Burgess Park to the south, Thurlow Street to the east and East Street to the north. The Wolverton block lay at the far north east of the estate fronting East Street. No. 28 was the maisonette closest to East Street.

10. By 2000 the Aylesbury Estate suffered from high levels of social and economic deprivation. It was visually unattractive and poorly designed and laid out. In 2005 the Council resolved to redevelop the estate given the excessive cost of its refurbishment. In January 2010 the Council adopted the Aylesbury Area Action Plan which now forms the key planning document for the re-generation of the estate. In February 2010 the Council resolved to make the necessary compulsory purchase orders. Wolverton was made the subject of a compulsory purchase order on 18 July 2012 which was confirmed without modification by the Secretary of State on 13 May 2013 following a public inquiry.

11. Access to No. 28 on the second floor was by means of a communal staircase leading from the ground floor to a communal balcony on the second floor. No. 28 was adjacent to the staircase. From the front door of No. 28 a private lobby served an internal staircase to the third floor where there were four bedrooms and a bathroom/WC. Further stairs led to the fourth (top) floor where there was a lounge, kitchen and a dining room together with a cloak room and a store. The property was single-glazed throughout. It had mains water, electricity and drainage. Communal heating and hot water was provided by the landlord, the cost of which was payable as part of the service charge. There was no secure entry system or concierge service to the Wolverton block.

12. The parties did not agree the gross internal area of No. 28. By the date of the hearing Mr Avery said that the GIA was 104m^2 while Mr McGreal said it was 99.7m^2. This discrepancy was due, at least in part, to a difference between the experts about the measurement of the lobby and the internal stairwell.

13. On 28 February 2005 the claimant acquired a 125 year lease in No. 28 from the Council under the right to buy provisions of the Housing Act 1985 for a premium of £77,000. This reflected a discount of £38,000 (33%) from the market value as assessed under the 1985 Act (£115,000). At the valuation date the lease had 116.5 years unexpired.

The case for the claimant

14. Mr Avery relied principally upon settlements that he had reached with the London Borough of Lambeth in respect of two four bedroom maisonettes which had been included within that council's Myatts Field compulsory purchase order, a scheme in Kennington to the south west of the Aylesbury Estate. The valuation date was said to be June 2013 in both cases and although the settlements were reached against the background of compulsory purchase powers Mr Avery said that the agreed values excluded the effect of blight. Apart from a few photographs, the only details of the settlements provided by Mr Avery were:

(i)	4 Fairbairn Green	86m^2 GIA	£217,270	£2,526 per m^2

(ii) 16 Treherne Court 76m^2 GIA £210,000 £2,763 per m^2

15. From these comparables Mr Avery adopted a value of £2,750 per m^2 and applied it to the area of No. 28, which for the purposes of his valuation he took to be 105m^2. (Mr Avery subsequently revised this area to 104m^2 but he did not amend his valuation.) This gave a value of £288,750 for No. 28 which Mr Avery increased by 3% to adjust for time between June 2013 and the valuation date of 21 August 2013. This gave an adjusted value for No. 28 of £297,500.

16. Mr Avery also produced a schedule of comparables which he described as comprising "properties on the market mostly with a history of being former local authority flats …. Particular care was taken to include only those properties that approximately matched the overall qualities and attributes of 28 Wolverton." The properties were of system built construction and were located in areas that were generally comprised of social housing.

17. The schedule of comparables contained summary details of nine properties, supported by copies of the sales particulars. Four of the properties were one bedroom flats, one was a two bedroom flat, one was a three bedroom maisonette "in need of updating", two were four bedroom freehold houses and one was a four bedroom "split level flat". The sizes of the comparables varied from 37.8m^2 to 133m^2 and the length of the unexpired terms of the leases varied from 89 years to 122 years. Only three of the comparables had been sold, the remainder were still on the market. Mr Avery "assumed that all comparables are sold at 95% of their asking prices." At the hearing Mr Gallagher applied unsuccessfully to admit a revised schedule, dated 23 May 2014, giving further details of the sale price of three of the comparables.

18. Mr Avery added the total price per m^2 of the nine comparables and took 95% of the result. This gave a "likely figure of gross sale proceeds" of £36,465 per m^2. Mr Avery said that this "equates to approximately £4,850 per m^2/GIA" which he said "compared favourably with the acquisition price of £2,526/£2,763 per m^2 GIA at Myatts Field but poorly in comparison with the £1,950 per m^2 GIA" that the Council had offered for No. 28.

19. Mr Avery criticised Mr McGreal's choice of comparable sales on the Aylesbury Estate which he said bore no relation to the Wolverton block and also made no allowance for blight. Mr Avery considered Mr McGreal's allowance of £5,000 to reflect the benefits of Wolverton's location at the edge of the Aylesbury Estate to be too small; it was a considerable advantage compared with Mr McGreal's centrally located comparables. Mr Avery said that an allowance of 10% to 15% should be made.

20. Mr Avery disputed that the Jespersen 12M construction system was problematic. He referred to a report prepared for the Council by Alan Conisbee and Associates in March 2005 in connection with risk assessments on the robustness of the large panel (Jespersen) system residential blocks on the Aylesbury Estate. Mr Avery said that for the purposes of this report the engineer's findings on the "4-storey block" were believed to apply to No. 28, although, as Mr Avery acknowledged, the Wolverton block was actually five storeys with the ground floor taken up by garages. Mr Avery said that the five storey blocks referred to in the Conisbee Report were located to the south west of the

Aylesbury Estate whereas the four storey blocks were located in the north east corner where Wolverton was situated. The Conisbee Report concluded that "there is no requirement for the 4 storey blocks on the estate to comply with robustness considerations". Strengthening was not required.

21. The Council's notice of the purchase price and other matters served under section 125(1) of the Housing Act 1985 on 6 May 2003 included the following statement:

> "The following structural defects are known to exist:-
>
> NONE ADVISED"

The total provisional estimated cost of repairs apportioned to No. 28 was £1,357. Mr Avery said that this was consistent with the Conisbee Report and showed that there were no structural problems associated with No. 28.

22. Mr Avery denied that No. 28 was not mortgageable due to its construction using the Jespersen 12M system. Fears about that system had been shown to be unfounded. The Council had failed to provide details of how many of the properties which it had acquired on the Aylesbury Estate had been the subject of a mortgage.

23. Mr Avery said that the Jespersen system of construction worked well in other locations such as the Doddington Estate at Battersea Park where there had been no problem regarding sales. Mr Avery's experience of the system was that values depended upon how well the buildings concerned had been constructed and maintained.

24. Mr Avery said that there was a strong demand for larger family accommodation such as No. 28. The proposed redevelopment of the Wolverton block for which planning permission was granted in July 2012 contained 28 four bedroom units. That represented 20% of the total number of proposed residential units or 28% by area. Mr Avery said that "Census statistics for 2011 in the Walworth East Ward show that approximately 3,000 family adults between the ages of 30-45 years live in the Ward out of a population of 11,557 (26.42% approximately)". This, said Mr Avery, supported his view that there was a demand in this location for larger family residential units.

25. No. 28 was located at the very edge of the Aylesbury Estate which enjoyed a much better environment than other parts with a significant area of green open space in close proximity. This had been kept in fair order and condition until the recent commencement of demolition works. Mr Avery said that it was wrong "to tar Wolverton with the same brush as other more unsocial parts of the Aylesbury Estate." The negative image of the estate generally had been caused by the Council's past neglect of the estate and by inadequate management during the extended period of the redevelopment scheme's existence. Mr Avery said that according to the Metropolitan Police (UK Crime Stats) crime and anti-social behaviour had declined in the Walworth East Ward over the preceding 12 months.

26. Mr Avery submitted (a few days before the hearing) a schedule of his pre-reference costs in two parts:

(i) An initial valuation comprising 9.5 hours at £175 per hour plus VAT. This gave a total of £1,995 including VAT.

(ii) Time spent on "abortive negotiations" comprising 6.5 hours at £175 per hour and "research material" costing £60. This gave a total of £1,437 including VAT.

The total amount claimed was therefore £3,432 including VAT.

27. Although the claimant made a witness statement, which was unchallenged, it contained no evidence of expenses incurred in connection with her removal from No. 28

The case for the acquiring authority

28. Mr McGreal said that there were three sources of comparables by which to value No. 28:

(i) acquisitions by the Council of dwellings on the Aylesbury Estate in the scheme world;

(ii) sales of former municipal dwellings located off the Aylesbury Estate; and

(iii) open market sales of dwellings on the Aylesbury Estate in the scheme world not involving the Council.

29. Mr McGreal produced a schedule of 21 sales in the first category, including 13 sales of dwellings in the Wolverton block. However he did not place weight on these settlements because of the *Delaforce* effect (the tendency of claimants to accept the compensation offered rather than incur the risks and burden of litigation). Mr McGreal said that claimants were concerned about their whole compensation package, including any home loss payment, disturbance and costs, and not just the open market value of their interest. The price they accepted depended upon their personal circumstances and settlement evidence was not a reliable guide to value.

30. Mr McGreal identified three examples of sales of four bedroom dwellings in the second category. They were located between 0.9km and 1.5km from No. 28. One dwelling was a first floor flat in a four storey concrete block above a row of shops and the other two were freehold sales of terrace houses, one of which was a three storey 1960s house of traditional construction and the other a two storey 1970s house of concrete frame construction with a flat roof. Mr McGreal said that "this limited and varied selection of comparisons makes drawing a confident conclusion very difficult." He likened the situation at the Aylesbury Estate to that of the Ferrier Estate in the London Borough of Greenwich which was considered by the Tribunal in *Sachikenye and Others v London Borough of Greenwich* CON/105/2006 and CON/18/2007 (unreported). The two estates were similar in scale, age, construction and social problems and the Tribunal, Mr P R Francis FRICS, said at [33] that:

> "The estate is ugly, badly planned and cannot, by any stretch of the imagination be compared with any other residential area in the locality."

Consequently Mr McGreal considered that the evidence of off-estate sales should not be used as direct comparables because of "their differences in construction, appearance and immediate locality to the Aylesbury Estate."

31. Mr McGreal rejected the use of Mr Avery's comparables of settlements on the Myatts Field Estate in Lambeth because they were physically distinct from the units in the Wolverton Block on the Aylesbury Estate. They comprised brick in-fill rather than concrete panels and were housed in low-rise, four storey blocks. He said that the Myatts Field Estate had a "wholly different feel to the Aylesbury Estate." Myatts Field was also much closer to train stations than the Aylesbury Estate.

32. Mr McGreal said that he had visited all of the other comparables put forward by Mr Avery, the majority of which were in low rise developments located close to the tube. He said that 46 Crampton Street was close to Elephant and Castle and was "totally different" to No. 28 in every respect.

33. Mr McGreal therefore focused upon the third category of comparables: open market sales on the Aylesbury Estate not involving the Council. Before analysing the comparables Mr McGreal explained why in his opinion there was no need to make any adjustment for blight. The reasons were the same as those Mr McGreal relied upon in *Joshua v London Borough of Southwark* [2014] UKUT 0511 (LC) and which are set out at paragraph 22 of that decision. In summary his reasons were:

(i) Although there was some evidence of blight following the resolution in principle to redevelop the Aylesbury Estate in 2005, a new market of cash purchasers had emerged following the financial crisis of 2008.

(ii) There was a strong demand for property to rent in this location and the estate flats were attractive to buy-to-let purchasers as they returned a yield that was relatively high.

(iii) Such buy to let purchasers knew that the Council were ultimately likely to acquire their interest given its intention to redevelop the estate. This meant that they would be able to sell at an unblighted open market value and receive the costs of sale and a basic loss payment of 7.5% under section 33A of the Land Compensation Act 1973.

(iv) It was unlikely that buy-to-let purchasers would have to contribute substantial capital sums under the service charge provisions of their leases because in the scheme world the Council were unlikely to bring the Aylesbury Estate up to the Government's "Decent Homes" standard. In the no scheme world the Council would have been likely to undertake the necessary works which Mr McGreal said in the case of the Wolverton block would cost £30,000 per leasehold property based upon works undertaken to similar blocks elsewhere in the borough.

(v) In the no scheme world the flats on the Aylesbury Estate would have been unmortageable due to the Jespersen method of construction, the relatively low level of

> home ownership, the poor perception of the estate and more stringent lending criteria following the financial crisis of 2008.

Mr McGreal reached the same conclusion about blight as he had in *Joshua* and expressed it in the same words:

> " With the market changes following the financial crisis I believe the properties on the estate would in the no scheme world be harder to sell and perhaps at lower values than is currently the case…."

34. Mr McGreal identified five comparable sales of dwellings on the Aylesbury Estate: 38 Latimer (four bedroom), sold 28 May 2013; 49 Missenden (four bedroom), sold 16 February 2012; 69 Missenden (four bedroom), sold 8 December 2011; 60 Gayhurst (five bedroom), sold 18 November 2013; and 59 Wendover (three bedroom), sold 11 September 2013.

35. Mr McGreal then eliminated the two comparables in the Missenden Block as being the furthest removed from the valuation date and as giving "contradictory" results. (49 Missenden showed an adjusted value of £172,714 whilst 69 Missenden showed an adjusted value of £149,444).

36. Mr McGreal adjusted each of the comparables for time to the valuation date. He added £5,000 to the value of each to reflect the superior location of No. 28 at the edge of the estate. He deducted £10,000 from the value of 60 Gayhurst because it was larger (121m^2) than No. 28. He deducted £5,000 from the value of Wendover because it had just been refurbished but added £5,000 because it was located in a high-rise tower block and added another £5,000 because No. 28 had four bedrooms rather than three. These adjustments gave the following results:

(i) 38 Latimer: £163,162

(ii) 60 Gayhurst: £160,732

(iii) 59 Wendover: £162,195

The average of these values was approximately £162,000 and Mr McGreal adopted the figure of £165,000 as being the open market value of No. 28 at the valuation date.

37. Mr McGreal then checked his valuation against his three off-estate comparables. He said that this was the approach taken by the Tribunal in *Sachikenye* where the Tribunal found that values of comparables off the Ferrier Estate were 50% higher than the value of those on the estate. He said that adjusting his valuation of £165,000 by 50% gave a value of £247,500 which was close to the midpoint of his three off-estate comparables, which ranged from £191,000 to £325,000. He concluded "that doesn't seem unrealistic bearing in mind the size of the subject property, its condition and location."

38. Mr Gallagher put it to Mr McGreal that the high yields on his three on-estate comparables resulted from the blighting effect of the scheme depressing prices and that but for the compulsory

purchase order investors would be happy with a fraction of such high yields and "an old style investor would look at 13.2% and would pay more. Mr McGreal acknowledged that compared to other residential properties in London 13% was a very high yield but he did not agree that but for the scheme investors would accept a fraction of that yield. He said that this was a "new form of investor" and he did not accept Mr Gallagher's proposition that such high yields suggested significant blight.

39. Mr McGreal said that the claimant's surveyor's fees should be determined in accordance with the RICS Guidance Note on the Calculation of Fees Relating to the Exercise of Statutory Powers in Connection with Land and Property. The guidance note required the claimant's surveyor to demonstrate that the fees claimed had been properly incurred and were reasonable and proportionate to the compensation at stake. Furthermore it was incumbent upon the claimant's surveyor to confirm the basis of his fees with the client and, if possible, with the acquiring authority. Mr McGreal had asked Mr Avery to confirm the basis of his fees on 23 May 2013 but did not receive a reply.

40. Mr McGreal said that it appeared the extent of the pre-reference work done by Mr Avery comprised an inspection of No. 28, "a crude valuation" of the property, writing two letters and two brief emails to Mr McGreal, considering correspondence received and attending a one hour meeting at Mr McGreal's office. Mr McGreal said that he considered a fee reimbursement of £800 to be fair and reasonable for such work. Mr McGreal said that the Council would meet the claimant's reasonable legal fees in dealing with the conveyancing of the property.

41. The claimant had not provided any proof of disturbance costs in the absence of which Mr McGreal said that no payment for disturbance should be made.

Discussion

42. Mr Avery relies principally upon two settlements with which he was personally involved at Myatts Field in the London Borough of Lambeth where that council acquired the properties in the context of a confirmed compulsory purchase order. Mr Avery gives few details of these properties other than a summary of their area, the purchase price and some external photographs. There is no description of the accommodation other than they are both four bedroom maisonettes. There are no floor plans. Their condition was said to be fair and similar to No. 28. Both had an open aspect on at least one elevation. Free car parking was available near by.

43. The external appearance of the two properties is different to that of No. 28. They both have brick elevations rather than concrete panels. Neither is constructed from the Jespersen 12M system. Both properties have a private garden/courtyard and appear to be located on ground and first floors.

44. Mr McGreal rejects the use of these comparables because of the *Delaforce* effect. But the *Delaforce* effect is likely to mean that the settlement is, if anything, on the low side. As the Tribunal, J Stuart Daniel QC, said in *Delaforce v Evans* (1971) 22 P&CR 770 at 778:

> "In ordinary cases of compulsory acquisition it is sometimes contended that previous settlements by the acquiring authority tend to throw up too low a value because the claimants could not or were unwilling to face the expense and delay of going to the Tribunal….. It is true also that in the ordinary case of compulsory acquisition the suggestion is that fear of proceedings produces settlements at too low rather than too high a price."

So the *Delaforce* effect usually means that claimants are unwilling to rely upon settlement evidence of acquisitions by an authority possessing compulsory purchase powers because they are too low. That is not so in this case where Mr Avery for the claimant seeks to rely on two such settlements. But those settlements are of properties on a different estate in a different borough and built from a different method of construction than the Jespersen 12M system.

45. In *Joshua* I was referred by the parties to the Tribunal's earlier decision in *Sachikenye* where the Member said that it was not possible to compare the subject estate with any other residential area in the locality. In *Joshua* I concluded at [25] that:

> "The Aylesbury Estate exhibited similar physical, environmental and social characteristics to the Ferrier Estate and the comparison between the two is apt in my opinion."

I agree with Mr McGreal that the Aylesbury Estate and the Myatts Field Estate are not comparable and I am not assisted by Mr Avery's reference to the two settlements at 4 Fairbairn Green and 16 Treherne Court.

46. In view of Mr Avery's reliance on two settlements reached under threat of compulsory purchase at Myatts Field it is perhaps surprising that he did not adopt the same approach in analysing settlements on the Aylesbury Estate, brief details of which appeared in Appendix PJM9 to Mr McGreal's expert report, especially since 13 of Mr McGreal's 21 comparables were in the Wolverton block. Mr Avery was apparently not involved in any of these settlements but nevertheless it would have been consistent for him to have analysed them. He said that he had not done so because the settlements were "probably affected by blight". But he emphasised in re-examination that in reaching the two settlements on the Myatts Field Estate the parties had negotiated "on the basis of the no scheme world" and had therefore ignored blight. It is reasonable to suppose that the 15 settlements at the Aylesbury Estate where the claimants were professionally represented would also have ignored blight. Mr Avery also said that in *Sachikenye* the Tribunal had not relied on evidence of settlements on the Ferrier Estate. But the majority of on-estate comparables in that case were rejected because they were either right to buy transactions under the Housing Act 1985 or were sales between related parties.

47. The fact is that neither party relied upon settlements reached at the Aylesbury Estate, even if only to set a minimum figure for compensation, and I therefore restrict my comments on Mr McGreal's schedule of such settlements to just one observation. One of the transactions involved 54 Wolverton, another 4 bedroom maisonette of similar size (97m^2) to No. 28. Mr Avery described it as "the mirror image of No. 28 but situated in a nosier location". The claimant was professionally advised and settlement was reached in June 2012 at £152,500. Adjusting for time using the Land Registry House Price Index that was exhibited by Mr McGreal as Appendix PJM14 to his expert

report gives a figure of approximately £169,500 as at the valuation date. I attach limited weight to this transaction as a baseline value.

48. Mr Avery also produced a schedule of three off-estate sales and six potential sales where he took 95% of the asking price as being the likely sale price. No dates of sale (or presumed sale) were given and there was no adjustment for lease length or the fact that two of the comparables were freehold houses. In any event Mr Avery's analysis of the nine comparables is inaccurate. He takes 95% of the "total price per m^2" even in respect of those comparables where there was an actual sale. He states that "a likely figure of gross sale proceeds would be £36,465 m^2 GIA. This equates to approximately £4,850 m^2/GIA." I do not know how Mr Avery arrives at the latter figure and he offers no explanation. Using his figures (which I think are wrong) it seems one should divide £36,465 per m^2 by nine to give an average of £4,052 per m^2. I am not assisted by this evidence. Mr Avery's calculations are suspect and I attach no weight to any comparable which has not been sold but is simply being marketed. To assume that such property will, in every case, sell for 95% of the asking price is speculation. The claimant sought to submit an updated schedule on the day of the hearing giving details of the actual sale of three of these properties (although still no date of sale was given). I refused to admit this amended schedule.

49. That leaves the three off-estate dwellings which were actually sold. One of these, 15 Slade Walk, was a one bedroom apartment with an area half that of No. 28. It is not comparable to No.38 and I place no weight upon it.

50. 12 Cavour House was a two bedroom brick-built maisonette with a private rear garden, large kitchen, central heating and double glazing. It is much smaller than No. 28 and is said by Mr Avery to have an area of 69.3m^2. The lease had 89 years unexpired. It is not comparable to No. 28 and I place no weight upon it.

51. The third actual sale was the freehold interest in a 4 bedroom terrace house at 46 Crampton Street near Elephant and Castle. I agree with Mr McGreal that this property is entirely different to No. 28 and I place no weight upon it.

52. I am uncertain what point Mr Avery was trying to make by referring to these comparables. He did not suggest that, as in *Sachikenye*, they should be compared with the results of open market sales on the estate where the reference property was located. Instead he compared them with the two settlements at Myatts Field. So he was comparing off-estate comparables with on-estate comparables, except it was not the estate with which we are concerned namely the Aylesbury Estate. His conclusion that £4,850 per m^2 as derived from the off-estate comparables compared "favourably" with the acquisition price of £2,526/£2,763 per m^2 at Myatts Field but "poorly" in comparison with the £1,950 per m^2 offered by the Council for No. 28 is, in my opinion, of no assistance, particularly when the calculations themselves appear to be wrong.

53. Mr McGreal does not rely upon the evidence of settlements reached by the Council on the Aylesbury Estate. Instead he focuses upon open market sales of dwellings on that estate not involving the Council. He identifies five such sales but then rejects two of them (49 and 69

Missenden). The details of the three remaining sales were taken from Mr McGreal's Appendix PJM7. This gives the number of bedrooms, the date of sale, the sale price, the gross internal area, details of lettings on annual shorthold tenancies, the rental yield, the designated date for regeneration of each block, the type of sale (auction and sale prior to auction) and, in two cases, whether there was a mortgage. There is no description of the accommodation and no reference to which floor level of the three blocks (Latimer, Wendover and Gayhurst) the comparables are on. No auction particulars are provided.

54. Mr Avery's criticism of these comparables focused on three main points:

(i) Mr McGreal had not considered the effect of blight on the sale prices;

(ii) Mr McGreal had not made an adequate allowance to reflect the advantageous location of No. 28 at the edge of the estate; and

(iii) Mr McGreal had allowed for differences in size by making spot-adjustments rather than deriving a rate per m^2 which could then be applied to the area of No. 28.

55. Mr Avery did not refer in terms to blight in his expert report. But in examination in chief he was asked to comment upon Mr McGreal's use of open market sales on the Aylesbury Estate not involving the Council. He said that Mr McGreal had not considered blight and that the Aylesbury Estate had been designated for redevelopment since the early 2000s. For seven years the proposed redevelopment of the estate had been in the public domain and therefore the sale prices relied upon by Mr McGreal would reflect blight. Mr Avery said that they were not market evidence. When asked to comment on Mr McGreal's adjustments to the three on-estate comparables Mr Avery said that he would not start with the sales figures because of the effect of blight. In re-examination Mr Avery explained that he had ignored blight when negotiating the settlements at Myatts Fields.

56. Mr McGreal devoted a large section of his expert report to considering blight and describing what he considers to be the emergence of a niche buy-to-let market following the financial crisis of 2008. This part of his expert report is a reprise of the evidence he gave to the Tribunal in *Joshua*, the substance of which is summarised above at paragraph 33. For the reasons that I gave in paragraphs 28 to 30 of my decision in *Joshua* I do not accept Mr McGreal's analysis of blight or the emergence of a buy-to-let market. (The references in *Joshu*a to paragraph numbers in Mr McGreal's expert report are verbatim those used in his expert report in this reference).

57. In *Joshua* the claimant's surveyor adjusted for blight at 10%, a figure which I accepted. In this reference Mr Avery did not specify a figure for such blight and indeed the fact that he thought there was any blight at all was first raised during his examination in chief. Mr McGreal's evidence on the point is the same as in *Joshua* and my analysis of it also remains the same. In my opinion the value of Mr McGreal's adopted on-estate comparables was affected by blight at the valuation date and an allowance of 10% should be made to reflect this.

58. Mr McGreal said that leaseholders in Wolverton would have been faced with capital expenditure of "at least £30,000 per property" in the no scheme world in connection with meeting the Government's Decent Homes Standards. But he made no allowance for this in his valuation and for the reasons I gave in paragraphs 34 to 36 of *Joshua* I make no explicit allowance for it.

59. Turning to the three on-estate comparables relied upon by Mr McGreal I consider firstly the claimant's argument that No. 28 is in a more advantageous location, being at the extreme north east edge of the estate. Mr McGreal made an adjustment for "location edge of estate" for two of the comparables (38 Latimer and 60 Gayhurst) and allowed an additional £5,000. For 59 Wendover he allowed an additional £10,000 for "lower rise block/location".

60. Mr Avery said that No. 28 had a pleasant outlook both to the east and to the west and was not overpowered by the view of the tower block at Taplow. There were views of landscaped areas and trees from most rooms. Mr Avery considered that Mr McGreal's allowance of £5,000 was too low and said that an adjustment in the range of 10% to 15% was appropriate. Mr McGreal acknowledged that the location of No. 28 was "a little better than in the heart of the estate" but still considered the entrance to the maisonette to be intimidating and dark.

61. Mr McGreal assumed that in the no scheme world Wolverton would have had a 95% plus occupancy rate. This compared with an assumed 90% plus occupancy rate for the Bradenham (tower) Block that featured in *Joshua*. He also said that the rate of right to buy sales in Wolverton was higher than for the Aylesbury Estate as a whole and he accepted that this suggested that the wing containing 1 to 59 Wolverton (including No. 28) was of better quality. There was no specific structural problem with No. 28. The Conisbee Report said that the five storey blocks had not been designed or constructed to avoid disproportionate collapse in the event of accidental loading. The Report recommended that gas should be removed from such blocks and strengthening works undertaken. There were no such requirements for the four-storey blocks. The parties did not agree whether, for the purposes of the Conisbee Report, Wolverton was a four-storey or a five-storey block. From the evidence I conclude that it was a five-storey block. But no structural defects were identified by the Council at the time of the exercise of the right to buy in 2003 and Mr McGreal accepted that the estimated total cost of capital repairs of £1,357 would not put off potential purchasers. The estimated cost of the work which would have been required to meet the Government's Decent Homes Standard was 75% of that estimated for 252 Bradenham in *Joshua*. The property had been purchased with a mortgage under the right to buy scheme and one of Mr McGreal's comparables (38 Latimer) was also purchased with a mortgage while it was not known whether 60 Gayhurst was mortgaged or not.

62. Taking all such evidence into account I am satisfied that No. 28 was a more attractive dwelling than many others in the Aylesbury Estate and that this should be reflected in an upward adjustment to the prices derived from the on-estate comparables adopted by Mr McGreal. But I consider that an adjustment of some 10% to 15% as suggested by Mr Avery is too high. Wolverton was still part of the Aylesbury Estate, albeit on the fringe of it, and was constructed from the unattractive and unpopular Jespersen 12M concrete system. The entrance to No. 28 was unpleasant and intimidating. In my opinion an upward adjustment of 5% is sufficient.

63. With regard to Mr McGreal's other adjustments I accept the use of the Land Registry House Price Index to adjust for time; the reduction of the value of 60 Gayhurst by £15,000 to reflect its larger size and an extra bedroom; the addition of £5,000 to 59 Wendover to reflect the fact that Wolverton is a low-rise block; and the addition of £5,000 to 59 Wendover to allow for a fourth bedroom at No. 28. Mr McGreal did not produce the sales particulars for any of his on-estate comparables and without them there is no corroboration regarding the condition of 59 Wendover. I therefore make no deduction for the condition of that property compared with No. 28.

64. The results of these adjustments are summarised below and set out in more detail in the attached Appendix:

(i) 38 Latimer: £183,000

(ii) 60 Gayhurst: £180,500

(iii) 59 Wendover: £189,000

The average of the three on-estate comparables is £184,000 (rounded).

65. As a check Mr McGreal then went on to compare his result (£165,000) against three off-estate comparables in what he described as the "Ferrier approach" (i.e. the approach adopted by the Tribunal in *Sachikenye*). I was critical of this approach at paragraph 53 of *Joshua* and for the reasons given there I do not find Mr McGreal's further analysis to be helpful.

66. I turn next to the issue of the claimant's surveyors fees. Mr McGreal did not dispute Mr Avery's hourly rate of £175 per hour, but he said that Mr Avery had not responded to his request for confirmation of the basis of his proposed fees in accordance with the RICS Guidance Note. Mr McGreal said that his assessment of £800 as being a fair and reasonable fee represented some 4.5 hours of time spent. Mr McGreal said that the item marked "checking CPO documentation" in Mr Avery's schedule was referable to the compulsory purchase order inquiry and not the valuation, although that point was not put to Mr Avery in cross examination.

67. Mr Avery submitted the reference to the Tribunal on behalf of the claimant on 19 July 2013. Prior to that, on 24 June 2013, Mr Avery had written to the Tribunal enclosing two sets of documents "in respect of my client's challenge to the validity of this CPO made by her under Section 23 of the Acquisition of Land Act 1981". Those documents included one dated 21 June 2013 which was headed "A challenge to the validity of the [CPO]". The Tribunal wrote to Mr Avery on 2 July 2013 explaining that the Lands Chamber is not the High Court and that section 23 of the 1981 Act confers no jurisdiction on the Lands Chamber to consider challenges to the validity of a compulsory purchase order. Following receipt of this letter Mr Avery made the reference dated 19 July 2013, and the document dated 21 June 2013 became the claimant's statement of case.

68. Mr Avery's challenge to the validity of the compulsory purchase order was misconceived; at least insofar as he thought it was a matter for this Tribunal. Mr Gallagher recognised this at paragraph 4 of his skeleton argument:

> "For the sake of completeness it is stated that it is accepted that the validity of the applicable CPO cannot be challenged in these proceedings and is therefore not in issue in these proceedings."

In my opinion at least two hours charged by Mr Avery related to this misconception and I disallow them.

69. Mr McGreal challenges the scope and extent of Mr Avery's involvement in the pre-reference stage of negotiations. Mr Avery did not produce any evidence of the fee basis agreed with the claimant or of any attempt that he made to agree his fee with the Council. I note from Mr McGreal's appendix PJM9 that the average (mode) fee agreed with claimants' surveyors is £1,300 plus VAT. The fee charged in respect of 54 Wolverton, which Mr Avery described as "the mirror image" of No. 28, was £2,350. In my opinion a fee of £1,750 plus VAT (10 hours at £175 per hour) represents the reasonable pre-reference costs of Mr Avery.

70. Mr Gallagher submitted that the Tribunal should "take judicial note" that the claimant had incurred incidental costs when moving out of No. 28. There was "no direct evidence" on the point but despite this Mr Gallagher urged that the Tribunal should "award a small sum in recognition" of the claimant having been disturbed from her possession of No. 28.

71. In *Lancaster City Council v Thomas Newall Limited* [2013] EWCA Civ 802 the Court of Appeal considered a claim for "management time" as an item of disturbance. Rimer LJ said at [32]:

> "The 'management time' issue was not, however, one falling within the specialist expertise of this tribunal. It was, in substance, a straightforward common law claim for compensation that had to be made good on the evidence; and if there was no evidence sufficient to make it good, the tribunal's duty was to reject it. The tribunal's error was to make an award of compensation when there was no evidence proving loss. That was unquestionably an error of law…"

72. In this case there is no quantified claim for disturbance and no description of what items constitute the alleged disturbance, other than the brief submissions made by Mr Gallagher (see paragraph 3 above). In her witness statement the claimant said she had to pay two mortgages for three months because she could not pay off the mortgage on No. 28 due to the Council taking that period to make (presumably) an advance payment of compensation. But the claimant's witness statement was unexamined, no details were given and the matter was not referred to in submissions. It is outside the expertise of the Tribunal to estimate, in the absence of any evidence, what the likely disturbance costs may be. I therefore make no award for disturbance or any other matter not directly based on the value of land.

Determination

73. I determine that:

(i) the open market value of No. 28 is £184,000

(ii) the claimant's surveyor's reasonable pre-reference fees are £1,750 plus VAT; and

(iii) there shall be no award in respect of disturbance or any other matter not directly based on the value of land.

In addition the Council have agreed that a home loss payment of 10% is payable as well as reasonable legal conveyancing costs.

74. This decision is final on all matters other than the costs of the reference. The parties may now make submissions on such costs and a letter giving directions for the exchange of submissions accompanies this decision.

Dated 9 December 2014

A J Trott FRICS

APPENDIX

Lands Chamber analysis of Mr McGreal's on estate comparables

(i) **38 Latimer**

Sale Price (28 May 2013)	£153,500	
Indexed to valuation date (21 August 2013)	1.0333	
	£158,612	
Adjustments		
(a) Location (5%)	£ 7,931	
	£166,543	
(b) Blight (10%)	£ 16,654	
		£183,197
Comparative value of No. 28, say		£183,000

(ii) **60 Gayhurst**

Sale price (18 November 2013)	£175,000

Indexed to valuation date		0.9756	
		£170,730	
Adjustments			
(a) Size and extra bedroom	(£15,000)		
(b) Location (5%)		£ 8,536	
		£164,266	
(c) Blight (10%)		16,427	
			£180,693
Comparative value of No. 28, say			£180,500

(iii) **59 Wendover**

Sale price (11 September 2013)		£156,000	
Indexed to valuation date		0.9876	
		£154,066	
Adjustments			
(a) High rise block		£ 5,000	
(b) Fewer bedrooms		£ 5,000	
(c) Location (5%)		£ 7,703	
		£171,769	
(d) Blight (10%)		£ 17,177	
			£188,946
Comparative value of No. 28, say			£189,000

Addendum on Costs

75. I have received submissions on costs from both parties.

76. Sealed offers were made by both the acquiring authority and the claimant. The acquiring authority accept that as a result of these offers it should meet the claimant's costs of the reference.

77. I therefore determine that the acquiring authority shall pay the costs of the claimant on the standard basis, such costs if not agreed to be the subject of a detailed assessment by the Registrar.

Dated: 16 February 2015