UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – blight – valuation of one bedroom flat – whether buy-to-let market created by the scheme – use of comparables affected by the scheme – adjustments to comparables – whether claimant's surveyor's fees excessive and unreasonable

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**OLUFEMI ADEMAYOWA JOSHUA**	**Claimant**
	and	
	LONDON BOROUGH OF SOUTHWARK	**Acquiring Authority**

Re: Flat 252 Bradenham,
Boyson Road,
London SE17 2BG

Before: A J Trott FRICS

Sitting at: 43-45 Bedford Square, London WC1B 3AS

On: 14 May 2014

Ike Ehiribe, instructed by Victory @ Law 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
Newman v Cambridgeshire County Council [2011] UKUT 56 (LC)

The following further cases were referred to in argument:

Lady Fox's Executors v Commissioners for Inland Revenue [1994] 38 EG 156
Ryde International v London Regional Transport 2004 EWCA Civ 232
Zarraga v Newcastle-Upon-Tyne Corporation [1968] 19 P&CR 609
Judge Lee v Minister of Transport [1969] 1 QB 111
Poole v South West Water Ltd [2011] RVR 286
Downsworth v Manchester City Council [2013] RVR 190

DECISION

Introduction

1. This is a reference to determine the compensation payable to the claimant, Mr Olufemi Joshua, upon the compulsory purchase of his leasehold interest in 252 Bradenham, Boyson Road, London SE17 2BG ("Flat 252") by the London Borough of Southwark ("the acquiring authority" or "the council").

2. The reference arises following the council's acceptance of a blight notice served by the claimant on 13 March 2013. The parties agree that the valuation date is 7 May 2013.

3. Mr Joshua claims the sum of £146,000 as the open market value of his leasehold interest. He also claims surveyor's fees of £31,607 plus VAT (as at 14 January 2014) and estimated legal costs of £23,160 including VAT. The acquiring authority say that the open market value of the claimant's leasehold interest is £116,000 and that a surveyor's fee of £1,300 plus VAT is fair and reasonable. The parties agree that a 10% home loss payment is payable. Apart from the issue of fees there is no dispute before the Tribunal about the amount of disturbance compensation.

4. Mr Ike Ehiribe of counsel appeared for the claimant and called Mr Wilson Dunsin FRICS, a director of Dunsin Surveyors Limited, as an expert valuation witness.

5. Ms Mary Cook of counsel appeared for the acquiring authority and called Mr Patrick McGreal MRICS, a principal surveyor with the council's Property Services Department, as an expert valuation witness.

Facts

6. Flat 252 is a one bedroom flat located on the thirteenth (top) floor of a fourteen-storey block of flats known as "Bradenham". The block forms 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.

7. The Aylesbury Estate is located south of Elephant and Castle in the Walworth district of Southwark. It lies between Camberwell Road to the west, Burgess Park to the south and Thurlow Street to the east. The Bradenham block is at the south west of the estate adjacent to Albany Road. It is constructed with pre-cast concrete panels fitted to a reinforced concrete frame, in a form of construction known as Jespersen 12M.

8. 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 regeneration of the estate. In February 2010 the council resolved to make the necessary compulsory purchase orders. Bradenham was identified for early acquisition as phase 1B. The first phase, 1A, immediately to the west of Bradenham, is nearing completion. At the date of the hearing phase 1B had not been implemented.

9. Flat 252 has a gross internal floor area of 56.3m^2 and comprises an entrance lobby and storage room on the twelfth floor with stairs leading up to a lounge/kitchen (with a balcony), a bathroom and WC and a bedroom. There is single glazing throughout the flat. The property has mains water, electricity and drainage. There is communal heating and hot water. There is no secure entry system or concierge service to the block.

10. The claimant acquired a 125 year lease in Flat 252 from the council on 14 June 2004 under the right to buy provisions of the Housing Act 1985 for a premium of £36,400. This reflected a discount of £33,600 (48%) from the market value as assessed under the 1985 Act (£70,000).

Issues

11. There are two issues in this reference:

(1) The open market value of Flat 252; and

(2) The amount of the claimant's pre-reference costs.

Issue 1: the case for the claimant

12. Mr Dunsin relied upon three comparables, all of which were similar one bedroom flats within the Aylesbury Estate. One of the comparables, 453 Wendover, was sold in July 2002. Mr Dunsin indexed this sale to the valuation date using the Land Registry House Price Index. Mr Dunsin chose this comparable because it was the last sale of a one bedroom flat on the estate before, he said, the blighting effect of the scheme began to affect prices (2005). The other two comparables, 28 Winslow and 109 Wendover, were both sold within six months prior to the valuation date (November 2012 and April 2013 respectively). These sale prices were also indexed to the valuation date.

13. Mr Dunsin then made a series of adjustments to align the comparables with Flat 252:

(i) *Bathroom*. He added £10,000 to the time-adjusted value of 453 Wendover to reflect its lack of space for a bath (it only had a shower cubicle);

(ii) *Panoramic views*. Flat 252 enjoyed panoramic views, being on the thirteenth floor of the Bradenham block. 453 Wendover enjoyed similar views (it was located on the

twelfth floor) so no adjustment was required. Mr Dunsin added £10,000 to the time-adjusted value of 28 Winslow which was on the second floor and had no views and £5,000 to the time-adjusted value of 109 Wendover which was on the fourth floor and had less panoramic views.

(iii) *Location, low rise, double-glazing.* 28 Winslow was in a better location, was in a low rise block and had double glazing. Mr Dunsin deducted £10,000 to reflect these advantages compared with Flat 252.

(iv) *Balcony:* Mr Dunsin added £5,000 to the time-adjusted value of 28 Winslow to reflect the absence of a balcony.

(v) *Blight.* Mr Dunsin said that the sales of 28 Winslow and 109 Wendover reflected the blighting effect of the scheme. He increased their sale price by 10% to allow for this which he considered to be a low and conservative figure. He chose a low figure because:

> "There is still an active rent and sales market on the estate despite its form of construction, impending demolition and neglect of the estate."

14. Having made these adjustments Mr Dunsin arrived at the following values for Flat 252 as at the valuation date:

(i) 453 Wendover: £142,181

(ii) 28 Winslow: £141,320

(iii) 109 Wendover: £155,477

He took a rounded average of the three comparables at £146,000 as being the open market value of Flat 252.

15. In his supplemental report Mr Dunsin criticised Mr McGreal's analysis of the sale of 109 Wendover. Mr McGreal referred to auctioneer's particulars for that property which described it as having a "reception room with kitchen area, three rooms, bathroom/WC" and having been "recently refurbished". It was said to be let on an assured shorthold tenancy at a rent of £300 per week (£15,600 per annum). Mr Dunsin said that 109 Wendover was a small flat with a floor area, taken from the Energy Performance Certificate, of 50m^2. There was no floor plan. Mr Dunsin said that it was not possible to fit four habitable rooms (one including a kitchen) into such a small area without contravening Part X of the Housing Act 1985 in terms of overcrowding. He considered the description in the auction particulars to be "false, inaccurate and misleading".

16. Mr McGreal had accepted in his supplemental report that 109 Wendover had been constructed as a one bedroom maisonette of the same type, layout and area as Flat 252. Mr Dunsin said that 109 Wendover should therefore be treated as a one bedroom maisonette irrespective of any works of alteration that had been undertaken. It was inappropriate to make adjustments for it having more rooms than Flat 252. A prudent purchaser would reduce their bid to factor in the costs of

reinstatement to a one bedroom maisonette and consequently 109 Wendover could not be considered to be in a better condition than Flat 252.

Issue 1: the case for the acquiring authority

17. Mr McGreal relied upon the approach adopted by the Tribunal, Mr P R Francis FRICS, in *Sachikenye and Others v London Borough of Greenwich* CON/105/2006 and CON/18/2007 (unreported), a case involving the compulsory acquisition of two dwellings on the Ferrier Estate, an estate similar in scale, age, construction and social problems to the Aylesbury Estate.

18. In *Sachikenye* the Tribunal took account of a comparables sale on the Ferrier Estate in 2003. This was time-adjusted by index to the valuation date in June 2006 and further adjusted for condition and the better location of the reference property. This analysis resulted in a value of £130,000 which the Tribunal then compared with the value of similar properties that were located "on more traditional estates". These other estate comparables showed an average value of £195,000 or 50% more than the value of the comparable on the Ferrier Estate. The member considered that this difference reflected "the locational, design and other disadvantages [of the Ferrier Estate] that I have referred to."

19. Mr McGreal therefore began his valuation by considering the sale of comparable flats on the Aylesbury Estate. He adopted two of the comparables used by Mr Dunsin, namely 28 Winslow and 109 Wendover. But he rejected Mr Dunsin's third comparable, 453 Wendover, as being too historic to be of assistance. In doing so he again relied on *Sachikenye* in which the member rejected the indexation of the sale price of one of the reference properties in 1987 to the valuation date in 2006.

20. When analysing the sale of 28 Wendover Mr McGreal made the same adjustments as Mr Dunsin for a panoramic view (plus £10,000), for location, low rise and double-glazing (minus £10,000). He made no allowance for the balcony at Flat 252 because he said it was only 1m wide and therefore added no value. Mr McGreal added £10,000 to reflect the larger size of the reference property (56.3m^2) compared with 28 Wendover (50m^2).

21. Mr McGreal made the same adjustment as Mr Dunsin for the better views enjoyed by Flat 252 compared with 109 Wendover (plus £5,000). Mr McGreal made two further adjustments in an addendum to his expert report in the light of the auction particulars for the sale of 109 Wendover in March 2013 (completed in April 2013). He made allowances for the inferior condition of Flat 252 (minus £5,000) and for the fact that it had fewer but larger rooms (minus £5,000).

22. Mr McGreal made no allowance for blight when analysing the comparables for the following reasons:

(i) Although there was some evidence of blight after the council resolved in principle to redevelop the Aylesbury Estate in 2005 (lower sales volumes and lower growth

compared with the Land Registry House Price Index), a new market of cash purchasers emerged following the financial crisis of 2008. Between February 2012 and November 2013 there were 15 sales of Jespersen style properties on the Aylesbury Estate, a rate of 0.71 properties per month. These sales were in the scheme world and compared with a rate of 0.45 sales per month prior to the scheme.

(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 would probably acquire their interest given the council's 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) There was a low probability of having to contribute substantial capital sums under the service charge provisions of their leases because in the scheme world the council were unlikely to undertake work 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 could cost £40,000 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 unmortgageable due to the method of construction (Jespersen), 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 referred to a letter from HSBC in which it said they would not offer mortgage facilities to persons wishing to purchase dwellings on the Aylesbury Estate. He also produced a schedule of pre-scheme sales that showed whereas 92% of purchasers in a neighbouring and traditionally built estate in Phelp Street were funded by mortgages only 27% of purchasers on the Aylesbury Estate (excluding the council as a party) had mortgages. Even before the scheme the Aylesbury Estate was unattractive and unpopular. The scheme was a response to its problems rather than their cause. In the no scheme world buy-to-let purchasers would have been more cautious because of the lack of mortgage availability to prospective purchasers on re-sale.

Mr McGreal concluded that "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…"

23. Having made his adjustments to the comparables Mr McGreal arrived at the following values for Flat 252 as at the valuation date:

(i) 28 Winslow: £114,070

(ii) 109 Wendover: £117,539

He took a rounded average of the two comparables at £116,000 as being the open market value of Flat 252.

24. Mr McGreal then checked this value against the value of off-estate comparables. He adopted the same approach as the Tribunal in *Sachikenye* and increased the market value of Flat 252 (£116,000) by 50% to give a figure of £174,000 as being "what the property would have been worth were it not of concrete panel construction and situated on the Aylesbury Estate." He produced a schedule of non Aylesbury Estate comparables and concluded that there was a sale range of £98,000 to £185,000 for one bedroom flats. He said:

> "this indicates a non Aylesbury value of the property of £174,000 which I consider is very much in the higher range of values but having regard to the size of the subject property is acceptable notwithstanding my reservations about the sale of 109 Wendover."

Those reservations related to the possibility that the purchaser of 109 Wendover may have bid on the property without realising that the alterations which had been made were not authorised under the lease.

Issue 1: decision

25. By the time of the hearing both parties relied only upon comparables on the Aylesbury Estate. Neither party relied upon comparables from other estates outside the scheme or upon settlements reached by the council with claimants under the scheme (although Mr McGreal compared the value of Flat 252 with off-estate sales as a check). This approach reflected the view expressed by the Tribunal in *Sachikenye* when discussing the Ferrier Estate in Greenwich. The Tribunal said at [33]:

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

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.

26. The difficulty with this approach is that the sale prices of the comparables were affected by the scheme. (I take the scheme to be the whole of the Aylesbury Estate regeneration and not just phase 1B; a view adopted by the council and not disputed by the claimant). Mr Dunsin says that the value of the comparables was reduced by 10% by the scheme whereas Mr McGreal says that, although the scheme may have reduced values initially by an average of 30% (excluding one bedroom units for which no or insufficient data was available), by the valuation date there was an active market of units on the estate for the reasons stated above. Mr McGreal said that in the no scheme world flats would have sold "perhaps at lower values than is currently the case" but he did not quantify any such reduction and proceeded as though the scheme did not cause any blight and was value neutral in its effect.

27. It is a matter of fact that the council accepted the claimant's blight notice. It was open to the council, given Mr McGreal's evidence about the absence of blight at the valuation date, to have

served a counter-notice on the ground contained in section 151(4)(g) of the Town and Country Planning Act 1990, contesting that the claimant had been unable to sell his interest except at a price substantially lower than that for which he might reasonably have been expected to sell if no part of the reference property was, or was likely to be, comprised in blighted land. The council's acceptance of the blight notice might establish a prima facie case that values were blighted by the scheme, but in my opinion such a conclusion is contradicted by the rest of the evidence. In accepting the blight notice Mr McGreal stated that he had "some concerns about [its] content" and expressed surprise that it had been served because "the council is keen to acquire your property." The council's acceptance of the blight notice afforded the claimant the ability to refer the dispute to the Tribunal but the council were trying to acquire Flat 252 by agreement anyway and I do not consider that the council's failure to serve a counter-notice constitutes a tacit acceptance that values were blighted.

28. Mr McGreal interprets the sales evidence as supporting his view that a niche buy-to-let market emerged after the financial crisis that began in 2008. In my opinion the evidence is not strong enough to support Mr McGreal's conclusions. He fairly acknowledges when discussing his analysis of blight between 2005 to 2010 that "this analysis is crude and must be treated with some caution." I would go further and say that this analysis, and his analysis of the market after 2010, is not reliable. I illustrate my conclusion by two examples.

1. Mr McGreal states at paragraph 9.8 of his expert report:

> "It is difficult to make a judgment on the current effect in value of the Estate's identification for regeneration, as [a] result of the changes in the market following the financial crisis, the type and motives of purchasers has changed. It is clear that not only has the volume of Estate sales increased but so have values. It can be seen that three bedroom units that were selling for around £145,000 last year are now selling for £155,000."

Mr McGreal's evidence of sales volume (described at paragraph 22(i) above) is apparently taken from his appendix PJM 7 where he identifies a total of 64 sales (37 pre-scheme and 27 post-scheme) on the Aylesbury Estate, excluding purchases by the council. He compares the 15 sales between February 2012 and November 2013 with the 37 pre-scheme sales between March 1999 and September 2005 to give respective sales rates pre-scheme (0.45 per month) and post-scheme/post financial crisis (0.71 per month). He concludes in paragraph 9.7 that:

> "This illustrates that in the past two years identification for regeneration rather than reducing sale volumes has in fact increased them."

But taking a similar period of 21 months for pre-scheme sales as Mr McGreal takes for post-scheme sales (i.e. from December 2003 to September 2005) the pre-scheme sales rate was actually 0.67 per month not 0.45 per month. There is no significant difference between the pre and post-scheme rates taken over an equal period. Furthermore only four out of the 64 sales relied on by Mr McGreal (excluding 109 Wendover which he takes as a two bedroom flat) were of one bedroom flats.

2. Mr McGreal's reference to the increase in the value of three bedroom flats between 2012 and 2013 appears to be based upon a very limited number of sales of flats in the Wendover block. There were two sales in September 2012 (£145,000 and £139,000) and one in September 2013 (£156,000). Mr McGreal adopts £145,000 and £155,000 as being the respective September 2012 and September 2013 values of three bedroom flats. This represents an increase of 6.9%. The increase in the Land Registry House Price Index for Southwark over the same period was 9.9% which suggests the possibility of continued blight.

29. In my opinion Mr McGreal's analysis rests upon a database that is not robust enough to support his conclusions. The sample size is too small from which to generalise results and it is possible to interpret the data in a different way to that which Mr McGreal suggests (as shown above). It would also be possible to offer alternative conclusions based upon other factors (e.g. the different size of the flats or the dates when each block is "designated for regeneration" which varies between 2014 and 2023).

30. For Mr McGreal to show that the emergence of a buy-to-let market at the Aylesbury Estate had offset the blight caused by the scheme he would have to show that relative values on the Aylesbury Estate and other local estates unaffected by the scheme were constant in the pre-scheme world and at the valuation date. Mr McGreal produced a partial analysis which gave 15 comparables of similar flats on other estates, nine of which had one bedroom, which were sold at or about the valuation date. But he did not undertake a similar exercise for pre-scheme sales of comparable flats on other local estates against which the later results could be calibrated. The details contained in Mr McGreal's appendix PJM 19 do not enable such a calibration to be undertaken.

31. Mr Dunsin said that his 10% adjustment for blight is conservative and that in his experience blight can affect values by 10% to 60%. This seems a fair comment in the light of Mr McGreal's analysis that net depreciation from 2005 to 2010 due to "regeneration identification" ranged from 14% for two bedroom flats to 53% for three bedroom flats, averaging 30%.

32. In the blight notice dated 13 March 2013 the claimant identified some of the problems associated with the scheme including the boarding up by the council of five of the nine flats on his floor. Another flat had been squatted and all three of the remaining flats had been burgled. A fire had been set in the bin cupboard next to the entrance door of Flat 252. None of this is denied by the council. Mr McGreal also said that "for the past two years the council had stopped carrying out any repairs to the block, except those necessary to comply with its statutory duty to keep the block in a safe condition."

33. Whatever the attraction of the Aylesbury Estate to buy-to-let purchasers in the scheme world I am satisfied that the value of the adopted comparables was affected by blight at the valuation date and that Mr Dunsin's allowance of 10% is reasonable.

34. Although Mr McGreal considered it to be an advantage for the scheme world purchasers of flats on the Aylesbury Estate not to have to worry about the significant capital expenditure likely to

have been incurred in the no-scheme world in meeting the Government's Decent Homes Standard, he made no allowance for it in his valuation. He explains his position in paragraph 11.8 of his report:

> "11.8 The Ferrier Estate case [*Sachikenye*] did not specifically address service charge liability for Decent Homes works. However I am inclined to think that such a liability is inherent in the approach that was adopted there. I am led to this view because the starting point in that case was a property sold at auction but in the no-scheme world would have had such a liability. It is therefore my opinion the reduction discussed in the above paragraph [two thirds of the estimated costs of Decent Homes works] would not have needed to be made in this case [*Sachikenye*] even if it had been explicitly raised."

I do not follow Mr McGreal's reasoning on this point. The comparable taken as a starting point in *Sachikenye* was sold in 2003. The Ferrier Estate was blighted by the scheme from 2000. So the sale took place in the scheme world and the price would have reflected any advantage to the purchaser of not having to meet Decent Homes expenditure. I do not see how "such a liability is inherent in the approach" taken by the Tribunal. It appears that the point was not raised in *Sachikenye* and that no adjustment for the liability for Decent Homes works was made when analysing the post scheme on-estate comparable sale. For his part Mr Dunsin said that the Tribunal's approach in *Sachikenye* was to index-link the "last open market transaction on the estate that took place prior to the announcement of the regeneration scheme." I do not accept that this is what the Tribunal did in *Sachikenye*. The sale that was index-linked took place in the scheme world.

35. In paragraph 11.9 of his report Mr McGreal said that making a two-thirds deduction (£26,500) of the estimated cost of Decent Homes works (£40,000) would give a resultant value for Flat 252 that was unrealistically low. He made no deduction in respect of the liability to potential Decent Homes works in the no-scheme world.

36. There is no evidence to support any adjustment for the potential savings in capital expenditure on Decent Homes works. The Tribunal made no adjustment for it in *Sachikenye* and I make no explicit allowance for it in this reference. Insofar as it is a factor that would have increased the price paid for the on-estate comparables I consider it to be implicitly reflected in the relatively low addition of 10% for blight.

37. Turning to the three comparables to which the experts refer I begin by rejecting 453 Wendover. I find no assistance in the indexation of a sale in July 2002 to the valuation date in May 2013. It is too long a period for it to be reliable, particularly in view of the intervening collapse of the property market due to the financial crisis that began in 2008. The Tribunal in *Sachikenye* similarly rejected the indexation of one of the reference properties from 1987 to 2006.

38. The difference between the experts about the adjustments to be made to the sale price of 28 Winslow concerns the balcony and the size of the property.

39. Mr Dunsin adds £5,000 to reflect the presence of a balcony at Flat 252. Mr McGreal says no allowance should be made because the balcony is so small (only 1m wide). Where a private balcony is present it is invariably referred to as a benefit in the sales particulars. In my opinion the balcony,

small though it is, adds value to the reference property. I consider Mr Dunsin's allowance of £5,000 to be reasonable.

40. Mr Dunsin allows for the size of comparable properties by calculating their adjusted value per m^2 and applying this rate to the agreed area of Flat 252. The only comparable that Mr McGreal adjusts for size is 28 Winslow where he adds £10,000 to allow for Flat 252's larger area. Mr Dunsin's size adjustment is £21,587 (his calculated rate for 28 Winslow of £2,510 per m^2 multiplied by the difference in areas which he takes as 8.6m^2). Mr Dunsin's adjusted sale price of 28 Winslow is therefore increased by 18% to reflect the increased size of Flat 252.

41. 28 Winslow and Flat 252 have different layouts. 28 Winslow is on the second floor and has its entrance at that level with access directly into a hallway. Flat 252 has its entrance on the twelfth floor which leads into a lobby with an internal staircase and a store to the left. The staircase gives access to the flat on the floor above. The difference in areas between the two flats is largely attributable to the inclusion of the lobby in the measurement of Flat 252. The room sizes are similar although those in Flat 252 appear to be slightly larger than those in 28 Winslow, with the exception of the bathroom (No. 28 also has a separate kitchen and lounge; at Flat 252 they form a single room). Overall the area of the rooms in Flat 252 appears to be about 5% larger. I do not consider that the application of a rate per m^2 that is derived from a comparable (28 Winslow) which has a lower ratio of corridor/circulation space than Flat 252 fairly represents a difference in value between the two flats. I prefer Mr McGreal's approach which adjusts for the difference in size between the two properties by making a lump sum allowance. I consider Mr McGreal's allowance of £10,000 to be reasonable.

42. Mr McGreal submitted a schedule of matters which he understood were not contested by the parties. Mr Dunsin did not sign or agree this schedule. One of the items in the schedule was the Land Registry House Price Index at the valuation date (7 May 2013) which Mr McGreal recorded as 474.3. In his expert report Mr McGreal gave the same value (at his appendix PJM 14) as 460.28. In his expert report Mr Dunsin gave the figure (in his appendix 7) as 458.57. Mr McGreal does not appear to have used the figure of 474.3 in any of his calculations. I prefer Mr Dunsin's figures and adopt them.

43. In my opinion the value of Flat 252 based on the sale of 28 Winslow is £130,750 (see Appendix 1).

44. 109 Wendover was sold in April 2013 for £120,000. Both experts agree that the price should be increased by £5,000 to reflect the superior views at Flat 252. Mr McGreal then deducts £5,000 because Flat 252 was in worse condition and deducts another £5,000 because Flat 252 had fewer but larger rooms. Mr Dunsin rejects these adjustments because he says the property was sold in a configuration and layout that contravene the overcrowding provisions of the Housing Act 1985.

45. The parties obtain their information about 109 Wendover from sales particulars. There was no room plan and no agreement about the size of the flat; Mr Dunsin relied upon the Energy Performance Certificate (50m^2) and Mr McGreal, in the addendum to his expert report, said that it was "of the same type and layout as the subject property with a gross internal area of around

56.3m^2." In the latest particulars, which were an extract from an auction catalogue, 109 Wendover is described as "recently refurbished" and comprising a reception room with kitchen area, three rooms and a bathroom/WC. When the property had been marketed in 2011 it was described as an "exciting refurbishment project". At that time the accommodation comprised living room, kitchen, bedroom, bathroom and storage. It seems that works of alteration were untaken between 2011 and 2013. Mr McGreal said that no permission for the works were sought or given under the lease. The earlier particulars gave the area of the rooms as a total of 47.9m^2 excluding the bathroom (although the separate kitchen is said to be larger than the living room which seems unlikely). There is no measurement of the circulation space (halls, landings etc). In the absence of clear and reliable evidence I make no adjustment for size given that 109 Wendover and Flat 252 were originally one bedroom flats of similar age, type and construction.

46. Mr Dunsin said that refurbishment works of the type seen at 109 Wendover would lead to a breach of the provisions regarding overcrowding in Part X of the Housing Act 1985 if undertaken at Flat 252. The definition of overcrowding is given in section 324 of that Act as being when the number of persons sleeping in the dwelling is such as to contravene the room standard or the space standard. The contravention of either standard is a function of how many persons sleep in the dwelling. Mr Dunsin said that the minimum size under the 1985 Act for a room available for sleeping (an adult) was 70ft^2 (6.5m^2). He said that if the bedroom at Flat 252 (11.75m^2) was subdivided to form two bedrooms then either one or both rooms would not meet this standard, especially given the need to provide adequate circulation space. But it is not inevitable that the reference property would be overcrowded if the single bedroom were to be subdivided. For instance the bedroom could be divided into a room of, say, 7m^2 suitable for a single parent and another of 4.75m^2 suitable for a child aged between 1 and 10 years old.

47. Mr McGreal also adduced sales particulars of 98 Taplow, another flat on the Aylesbury Estate. This was marketed as comprising "four rental rooms" and on the plan attached to the particulars four bedrooms were shown, with a small separate kitchen and a bathroom/WC. Two of the bedrooms are shown on the plan as being 56ft^2 and therefore too small to act as sleeping accommodation for an adult. Whether overcrowding would occur would depend upon how many persons actually slept in the dwelling but in this example, which Mr McGreal apparently produced to show that this type of sub-division was common on the Aylesbury Estate, overcrowding would probably be inevitable, if the dwelling were occupied as advertised.

48. Ms Cook submitted that with this type of property, where the overcrowding standards may be liable to be breached "the [acquiring authority] suggests in this buoyant buy-to-let market investors will assess risk and take a view". That submission seems to be corroborated by the sale of 109 Wendover and 98 Taplow. I do not accept Mr Dunsin's approach that the sale of 109 Wendover must be taken to be the sale of a one bedroom flat notwithstanding that it was clearly sold as a two bedroom flat, a fact which would have been reflected in the price.

49. In my opinion the purchase price of 109 Wendover reflected the possibility of occupation that would either be contrary to law or detrimental to the health of the occupants of the flat. Any increase in the value of 109 Wendover which was due to such use, or the prospect thereof, falls to be disregarded under section 5 rule (4) of the Land Compensation Act 1961 when used as a comparable

to value Flat 252. I consider a reduction of 10% to be reasonable to reflect this factor and the better (refurbished) condition of 109 Wendover.

50. In my opinion the value of Flat 252 based on the sale of 109 Wendover is £125,500 (see Appendix 2).

51. The average of the valuations based on the two comparables is £128,125. I place greater weight on the comparable at 28 Winslow for which better measurements were available and where there was no adjustment required in respect of alteration works. I therefore value 252 Bradenham in the sum of £129,000.

52. Mr McGreal undertakes a further check at this point which is to stand back and compare his valuation with the value of similar unblighted properties not on the Aylesbury Estate, an approach which he says was that adopted by the Tribunal in *Sachikenye*.

53. The Tribunal in *Sachikenye* considered the valuation of two properties, 12 Elford Close and 136 Ebdon Way. There was only one reliable comparable identified by the Tribunal, at 17 Elford Close and even that required several adjustments including a substantial allowance for repairs. There were no direct comparables by which to value 136 Ebdon Way. In order to value that property the Tribunal took the adjusted value for 17 Elford Close and compared it with six off estate comparables. The Tribunal said that "as it transpires" this analysis showed the value derived from 17 Elford Close to be two thirds that of the off estate comparables. So the Tribunal took this ratio and applied it (in reverse) to the five off estate comparables that were available in respect of 136 Ebdon Way. That was the only way that the Tribunal could value 136 Ebdon Way. I do not consider that technique to be a useful check to the valuation in this reference where there are two agreed comparables. The method adopted in *Sachikenye* was a last resort in the absence of good evidence and there is no reason to assume that the ratio of on estate to off estate values would be the same in this case. Besides Mr McGreal only makes a simple comparison between the sale price of the off site comparables and his adopted value for Flat 252 of £116,000. He makes no adjustments in respect of the off estate comparables for size, floor level, double glazing, date of sale etc. I do not find Mr McGreal's check valuation to be helpful.

Issue 2: facts

54. In a letter to the claimant (Mr Joshua) dated 22 September 2010 Mr Dunsin said:

> "Our fee to represent you and negotiate on your behalf with regards to the proposed acquisition of the property would be between 1% and 2% of the purchase price plus VAT depending on how long the negotiation takes. …
>
> We hope to be able to reach an agreement with the council without the need to refer this matter to the Lands Tribunal. Our fee for dealing with this matter once it gets to the Lands Tribunal stage is at our hourly rate of £150 plus VAT."

55. In a letter to the council dated 23 September 2010 Mr Dunsin referred to the issue of professional fees:

> "I note that you have expressed concern about our fee scale whilst writing to us about some of our other clients' properties on the estate. We do not see any reason why this matter cannot be settled amicably within a short timescale without the need for protracted negotiations that may eventually end up being determined by the Lands Tribunal. We would therefore be prepared to accept a fixed fee of £1,200 plus VAT for the negotiation but only on the condition that we are able to reach an agreement on the purchase price within a month from today's date (i.e. by 22nd October 2010). If we are unable to reach an agreement by the set date, then our fee will have to be as stated in our letter to Mr Femi Joshua of 22nd September 2010."

56. The council sought confirmation from Mr Dunsin that he would agree a "capped fee to you of £1,200 + VAT (per case)" and on 1 November 2010 Mr Dunsin replied that:

> "I am accordingly prepared to accept your fee basis on the understanding that this would not turn out to be a complex case."

57. Protracted correspondence and negotiations ensued between the parties but without success. On 28 June 2012 Mr Dunsin wrote to Mr McGreal and said:

> "As you are aware, we have still not reached any agreement with regards to my fee for representing my clients. I have been involved with these negotiations since August 2010 and my fee at the end of these matters will be based on a work done and time spent basis at my current charging rate of £200 plus VAT per hour. If you are still not in agreement with my fee structure then this matter will be determined by the Upper Tribunal along with all the other disputed items of claim."

This was the first time that an hourly rate of £200 was mentioned.

58. The council took possession of Flat 252 on 7 May 2013 and on 14 May 2013 Mr McGreal wrote to Mr Dunsin and said:

> "I recognise now that following entry we are in a formal compulsory purchase situation and this should be reviewed in respect of the subject property. The Council will therefore reimburse £1,300 plus VAT up to and including 7 May 2013 and then a rate of £150 per hour in respect of work reasonably and necessarily carried out thereafter up to a further £750 when a further review takes place."

59. Mr Dunsin responded on 28 May 2013 and denied that a definite agreement on fees had been reached. He said that he was not prepared to accept the council's proposed flat fee rate of £1,300 plus VAT per hour or a proposed hourly rate of £150 plus VAT. He continued:

> "In a final attempt to resolve this matter regarding the Surveyor's fees, without the need for the reference to the Tribunal, I will be prepared to accept a flat fee of £6,500 plus VAT. This final offer to settle my fee at a flat rate of £6,500 plus VAT is only available for acceptance by the

council up till 11th June 2013. I will make the application to the Tribunal for a determination of my fee at £12,000 plus VAT if this final offer is not accepted by the council by 11th June 2013."

The offer was not accepted by the council and the claimant proceeded to refer the matter to the Tribunal on 21 June 2013.

Issue 2: the case for the claimant

60. Mr Dunsin said that the claimant was entitled to receive his costs of preparing and pursuing the claim for compensation. Although the parties had considered several payment options nothing had been agreed and the claimant had not accepted the council's proposal for a flat fee of £1,300 plus VAT.

61. Mr Dunsin had been involved with the case since September 2010 and due to his efforts the acquiring authority had increased its offer several times from an initial £65,000 to £116,000 (an increase of over 78%). Mr Dunsin said that the case had turned out to be "particularly complex". As such it was appropriate that Mr Dunsin's fee should be assessed on "a work done and time spent basis at my charging rate of £200 plus VAT per hour."

62. Mr Dunsin considered £200 per hour to be a reasonable rate for a London chartered surveyor and he provided a number of examples where it had been accepted as such by other acquiring authorities. He submitted a spreadsheet giving a detailed breakdown of the time spent on the case between 14 September 2010 and 14 January 2014. This amounted to some 158 hours and a fee of £31,607.

63. Mr Ehiribe submitted that the council had persistently and relentlessly made unrealistically low offers of compensation to the claimant which Mr Dunsin had needed to refute at length.

64. On 12 May 2014, two days before the hearing, the claimant's solicitors submitted a "Schedule of Costs" which appears to relate to the legal costs of the reference and attendance at the hearing. The total amount was £23,160 including VAT.

Issue 2: the case for the acquiring authority

65. Mr McGreal said that upon being advised that Mr Dunsin had been instructed to act for the claimant the acquiring authority had sought to agree the basis for his reimbursement. The council wrote to Mr Dunsin on 28 October 2010 proposing a capped fee of £1,200 plus VAT per case, Mr Dunsin having been instructed to act in respect of 10 different properties. Mr Dunsin accepted this proposal on 1 November 2010 (see paragraph 56 above).

66. Mr McGreal explained that this level of reimbursement was in accordance with fees that had been agreed with other surveyors representing leaseholders on the Aylesbury Estate. Two of the

cases upon which Mr Dunsin was instructed were settled at the agreed 2010 level of £1,200 plus VAT (97 Chartridge and 25 Wolverton). The fixed fee was subsequently increased to £1,300 plus VAT to allow for the effects of inflation.

67. Ms Cook submitted that Mr Dunsin's fees were neither reasonable nor proportionate to the compensation in issue. When he accepted the claimant's instructions to act on 22 September 2010 Mr Dunsin said that "our fee for dealing with this matter once it gets to the Lands Tribunal stage is at an hourly rate of £150 plus VAT". In the schedule of his costs Mr Dunsin's hourly rate was stated to be £200 plus VAT but there was no written evidence that he had contractually agreed this higher amount with his client.

68. It was of no consequence that Mr Dunsin had agreed £200 per hour with other acquiring authorities. Such agreements were usually on the basis of a limited number of hours to be charged. Mr Dunsin had accepted a flat rate of £1,200 plus VAT in November 2010. On 28 May 2013 Mr Dunsin had written to the council making a final offer to settle at £6,500 plus VAT or £12,000 plus VAT if the matter proceeded to the Tribunal. And yet here he was now claiming over £31,600 as at January 2014, several months before the hearing.

69. Mr Dunsin acted for at least 10 claimants but in his correspondence he had failed to apportion the time that he had spent on individual cases. There should have been considerable economies of scale but Mr Dunsin insisted that the time specified in his costs schedule related only to work done in respect of Flat 252 even though the correspondence to which he referred often covered multiple sites.

70. Much of the "research" that Mr Dunsin said he had undertaken related to comparables that were not on the Aylesbury Estate and were no longer relied upon by him. Ms Cook submitted that it was unreasonable to expect the council to pay for work which was nugatory and of no relevance to the dispute.

Issue 2: decision

71. There is no dispute that the claimant is entitled to receive as compensation not only the open market value of his leasehold interest but also his conveyancing costs and the fees which he has to pay his surveyor in preparing, negotiating and settling the claim. It is the quantum of those surveyor's fees which is in dispute in this reference.

72. The RICS Guidance Note on the calculation of fees relating to the exercise of statutory powers in connection with land and property (December 2006) states:

> "the fee should in all cases be proportional to the size and complexity of the claim, and be commensurate with the time, effort, and expertise required to deal with the case. …Surveyors advising claimants must ensure that in all cases the basis upon which they propose to charge fees, the arrangements for payment, and any subsequent changes are agreed not only with the

client but also set out and submitted to the acquiring authority from whom in due course reimbursement will be sought."

73. The parties entered into correspondence about the basis for an agreed fee but ultimately failed to reach an unconditional agreement, Mr Dunsin qualifying his acceptance of a fixed fee by reference to the complexity of the case. I reach the following conclusions about the claimant's surveyor's fees in the light of the evidence which I have summarised at paragraphs 54 to 59 above:

(i) There is no evidence that Mr Dunsin agreed an hourly rate of £200 plus VAT with the claimant. The original rate (November 2010) was £150 per hour. The first reference to £200 per hour was not until June 2012, although Mr Dunsin's cost schedule assumes the higher rate from the start.

(ii) Mr Dunsin twice accepted a capped fixed fee of £1,200 plus VAT subject to the case not being "complex".

(iii) This is not a complex case. It involves the valuation of a one bedroom flat. There is no dispute about disturbance. It is difficult to imagine a simpler and more straightforward valuation.

(iv) Mr Dunsin was instructed on a number of claims and the correspondence with the council is often headed with multiple case references. I find Mr Dunsin's claim that his schedule of time spent refers only to Flat 252 in respect of such correspondence and its associated research to be disingenuous. In my opinion the amount of time spent on Flat 252 has been exaggerated considerably.

(v) Mr Dunsin does not distinguish between pre-reference costs and reference costs. The reference was made on 21 June 2013 and the number of hours spent before that date was 95.45 which, taken at Mr Dunsin's claimed hourly rate of £200, amounts to some £19,000. The balance of the £31,600 claimed represents Mr Dunsin's costs in the reference. Whether the claimant will receive costs in the reference depends upon whether the acquiring authority have made an unconditional offer in writing under section 4 of the Land Compensation Act 1961 which exceeds the Tribunal's award. That is a matter for submissions on costs following this substantive decision. The same applies to the claimant's legal costs of the reference which were specified in the schedule submitted on 12 May 2014. That schedule does not appear to refer to pre-reference legal and conveyancing costs. Any costs awarded to the claimant as costs of the reference will be subject to detailed assessment if they are not agreed.

(vi) Pre-reference costs of over £19,000 are not, in my opinion, proportionate to the size and complexity of this claim and are not commensurate with the time, effort and expertise required to deal with it. In short, they are unreasonable. A considerable amount of time was spent by Mr Dunsin researching comparables that were located away from the Aylesbury Estate. In a letter to the council dated 6 October 2010 Mr Dunsin said:

> "I would indeed have preferred to use comparables in the estate for my valuation. However, as several of the blocks in the estate are due to be demolished, they cannot be relied upon as relevant comparables."

In February 2011 Mr Dunsin reiterated this approach:

> "I am not refusing to consider properties that have been sold on the estate. However, the fact that properties on the estate have been blighted by the impending demolition works must be taken into consideration in the valuation analysis. It is these impending demolition works that account for the apparently low sales figures."

In a letter dated 20 January 2014 Mr McGreal suggested, with some justification, that Mr Dunsin seemed "to have had a *Damascene conversion* to the Council's approach of following the precedent in the Ferrier Estate in Kidbrooke" insofar as Mr Dunsin had come to rely solely upon comparables that were on, rather than off, the Aylesbury Estate. This sudden change of approach meant that most of Mr Dunsin's earlier research and correspondence was otiose.

(vii) The lack of progress with the negotiations was not entirely Mr Dunsin's fault. The council's record of gradually increasing their offers for Flat 252 (six times, from £65,000 to £116,000 between 23 August 2010 and 30 April 2014) lends weight to Mr Ehiribe's submission that they had consistently undervalued Flat 252 and that this had caused unnecessary delay. As the Tribunal, Mr N J Rose FRICS, said in *Newman v Cambridgeshire County Council* [2011] UKUT 56 (LC) at [21]:

> "If, as in this case, an acquiring authority offers an unrealistically low level of compensation at the outset, a claimant is entitled to proper representation from a surveyor, acting reasonably, until a proper offer is forthcoming, and the reasonable cost of such representation is to be borne by the authority, not the claimant."

74. Taking all of these matters into account a reasonable allowance for Mr Dunsin's pre-reference costs is £3,500 plus VAT. This represents a total of 20 hours work, half of which I take at his original rate of £150 per hour and half of which I take at his increased rate of £200 per hour.

Determination

75. *Issue 1*: I determine the open market value of the claimant's leasehold interest in Flat 252 in the sum of £129,000 as at the valuation date.

76. *Issue 2*: I determine the amount of the claimant's surveyor's pre-reference fees in the sum of £3,500 plus VAT.

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

Dated 27 November 2014

A J Trott FRICS

Addendum on Costs

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

79. The claimant submits that he was successful on both issues and should therefore receive his costs in full.

80. The council says that the determination of the value of the land taken and of the amount of the claimant's surveyor's pre-reference fees both exceed any offer which it made. The council therefore agrees to pay the claimant's costs on the standard basis, such costs to be subject to detailed assessment if not agreed.

81. The council did not make a sealed offer and therefore the particular rules on costs under section 4 of the Land Compensation Act 1961 do not apply. The general rule is that the successful party ought to receive their costs unless there are special reasons for not doing so. The council do not suggest that there are any such reasons in this reference.

82. 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.

83. The claimant seeks his costs "in full". He does not state in terms that this refers to indemnity costs and, in my opinion, such an award would be inappropriate in this instance. I have given at paragraph 73 above my views about Mr Dunsin's pre-reference costs which I found, in short, to be unreasonable. These comments should be taken into account when agreeing or assessing the claimant's costs in the reference. On the standard basis:

> "Costs will only be allowed to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount will be resolved in favour of the paying person." (Practice Direction 12.4).

Dated: 18 December 2014

A J Trott FRICS

APPENDIX 1

Value of Flat 252 based on analysis of sale of 28 Winslow.

Sale price of 28 Winslow (November 2012):	£100,000	
Indexation factors (11/2012 to 5/2013):	1.0385	
		£103,850
Adjustments:		
(i) Panoramic view:	£10,000	
(ii) low rise, location, double-glazing	(£10,000)	
(iii) Balcony	£5,000	
(iv) Size	£10,000	
		£ 15,000
		£118,850
Allowance for blight at 10%		£11,885
		£130,735
Unblighted value of Flat 252, say		£130,750

APPENDIX 2

Value of Flat 252 based on analysis of sale of 109 Wendover

Sale price of 109 Wendover (April 2013):	£120,000		
Indexation factor (4/2013 to 5/2013):	1.0044		
		£120,528	
Adjustments			
(i) Panoramic views		£ 5,000	
		£125,528	
Allowance for blight at 10%		12,553	
Allowance for condition/rule (4) value increase:		(12,553)	
			£125,528
Unblighted value of Flat 252, say			£125,500