



ACQ/20/2004

**LANDS TRIBUNAL ACT 1949**

*COMPENSATION – compulsory purchase – valuation – residential flat – nature of surroundings and condition of building containing the flat – comparables – compensation of £75,000 awarded.*

**IN THE MATTER OF A NOTICE OF REFERENCE**

**BETWEEN**

**Ms DENISE McGUINNESS**

**Claimant**

**and**

**LONDON BOROUGH OF SOUTHWARK**

**Acquiring  
Authority**

**Re: Flat 55E, Marcia Road, London, SE1**

**Before: N J Rose FRICS**

**Sitting at Procession House, 110 New Bridge Street, London, EC4V 6JL  
on 7 December 2004**

N L Lee FRICS, of Housecheck Ltd, chartered surveyors of Great Missenden for the claimant with permission of the Tribunal

M Mayne MRICS, of the acquiring authority's property department, for the acquiring authority with permission of the Tribunal

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## DECISION

### Introduction

1. This is a reference to determine the compensation payable by the London Borough of Southwark (“the acquiring authority”) to Ms Denise McGuinness (“the claimant”) for the long leasehold interest in a residential flat known as 55E Marcia Road, London, SE1 (“the subject property”), compulsorily acquired under the London Borough of Southwark (Marcia Road) Compulsory Purchase Order 1999 (“the CPO”). The CPO was made on 28 April 1999 and confirmed by the Secretary of State for the Environment, Transport and the Regions on 21 October 1999. Notice to treat was served on 18 January 2000 and possession was taken on 28 February 2000, which is the agreed valuation date.

2. It was suggested by both parties and ordered by the Tribunal that the simplified procedure provided for in rule 28 of the Lands Tribunal Rules 1996 would apply to this reference. Mr N L Lee FRICS, managing director of Housecheck Ltd, chartered surveyors of Great Missenden appeared for the claimant with permission of the Tribunal and gave evidence. He also called the claimant and Mr G Trew to give factual evidence. Mr Trew was formerly a joint owner of the long leasehold interest in the subject property, but subsequently sold his share to the claimant and became her tenant. Mr M Mayne MRICS appeared for the acquiring authority with permission of the Tribunal and gave evidence. He is a senior surveyor in the acquiring authority’s property department. It is agreed that the claimant’s interest is to be valued with vacant possession. The amount of compensation claimed at the hearing was £87,500 and the acquiring authority’s figure was £55,000.

### Facts

3. From the evidence I find the following facts. The subject property was situated on the second floor of a block of six flats which had been laterally converted from three late Victorian houses. It was accessed off a communal internal staircase. Electric storage heaters had been installed. There was no lift, but there was access for the block residents from the communal entrance lobby to a rear communal garden. The block was on the north-eastern side of Marcia Road, which is the quieter side, being further from the Old Kent Road. At the valuation date the subject property was in very good decorative condition throughout.

4. The net internal area of the subject property was approximately 35m<sup>2</sup>. The accommodation consisted of:

Small entrance hall	
Kitchen	2.7 m x 1.65 m
Living room	3.2 m x 3.65 m
Bedroom	3.2 m x 3.65 m
Bathroom/WC	2.7 m x 1.6 m

5. Marcia Road is a street of terraced three storey houses. It runs to the north-east of and, for the greater part, parallel to Old Kent Road, which it joins at one point and to which it is linked at another by Penry Street.

6. The area in the immediate vicinity of the subject property generally comprises a mix of commercial/retail uses fronting both sides of Old Kent Road with residential development behind. The area behind Marcia Road to the north-east is in warehouse/industrial use. Bus routes are close by and Bermondsey underground station is about 15 minutes walk away. The subject property lies within the London Borough of Southwark. At the valuation date that authority owned the freehold interest in most of Marcia Road and Penry Street and, indeed, approximately two-thirds of the housing stock in the borough.

7. At the valuation date Marcia Road comprised an entire street of 77 terraced houses which had been purchased by the acquiring authority in the early 1970s. In this street and the adjoining Penry Street there were only seven privately owned homes, the remainder being held by social housing landlords. These properties had undergone considerable remodelling and conversion in the mid 1970s to provide 64 one bedroom flats, 57 two bedroom flats, 7 three bedroom flats and 13 four bedroom houses. Like the subject property, most of the flats were lateral conversions spanning across a block of three houses. This involved cutting openings in the party walls, removing two of the three staircases, blocking in two front doors and demolishing the two-storey rear additions. By the early 1990s tenants of the flats had for some time been expressing concern over the state of repair of the properties.

8. In 1993 a report by consulting engineers highlighted various structural problems and concluded that without major refurbishment these properties would continue to be a drain on the acquiring authority's maintenance budget. By 1994/95, whereas the accommodation in Marcia Road/Penry Street represented 4% of the acquiring authority's neighbourhood housing stock, it absorbed 14% of the repair budget.

9. In November 1996 an option appraisal study commissioned by the acquiring authority indicated that refurbishment would never be a wholly satisfactory solution, because of problems associated with the layout of the lateral flat conversions. New build or reinstatement as individual houses provided the only feasible solution to these problems. Following a process of public consultation, surveys of the residents were carried out to ascertain their preferences. Most did not wish to return and were keen to move out quickly, with a majority favouring demolition. Money was not available from the acquiring authority's general housing funds to redevelop the street, so any scheme would have had to be carried out in connection with a private sector partner and/or housing association.

10. The acquiring authority's Director of Housing reported to the Housing Committee on 18 June 1997 on proposals which had been drawn up by council officers in consultation with the residents of Marcia Road for the redevelopment of the area. His report contained the following recommendations:

“That a brief be prepared and interested parties invited to submit proposals for the redevelopment of Marcia Road and Penry Street as outlined below. That these

proposals be drawn up on the basis that vacant possession will have been obtained of all the dwellings within the area concerned.

That the proposed decant policy as set out in para 4.8 be agreed for officers to begin implementing from 1 September 1997 subject to the necessary approval having been obtained from Capital Planning Group and Strategic and Corporate Committee as detailed below.

That negotiations are started with a view to securing possession of the leasehold properties and freehold properties.”

11. These recommendations were accepted and the acquiring authority proceeded to decant its existing tenants and obtain possession of the remaining properties. It acquired the privately owned long leasehold interests in 32E, 37B, 56F and 83D Marcia Road by agreement in May and June 1998.

12. In July 1998 the acquiring authority’s consulting engineers prepared a report on the condition of a selection of the Marcia Road and Penry Street properties. They stated that, at the time of their inspection the previous month, keys had been available for 50 vacant properties in Marcia Road and 2 in Penry Street. These properties were in addition to 32E, 56F and 83D Marcia Road which had recently been, or were about to be purchased by the acquiring authority with vacant possession.

13. The long leasehold interest in 19E Marcia Road was acquired by the acquiring authority by Order of the County Court. The flat had been abandoned and the authority was mortgagee in possession. The date of possession was 18 August 1999.

14. Although the acquiring authority spent a large sum of money employing security guards and installing steel shutters to prevent entry to the vacated units, many were occupied by squatters and drug addicts and were vandalised.

15. Negotiations to acquire the subject property proved unsuccessful and the CPO was made in April 1999. The acquiring authority had originally proposed to convert each of the laterally converted buildings back into individual houses as they had been prior to conversion. Following stripping out and site investigations in part of the street, however, it was decided that a new build solution, re-cycling the existing building materials and replicating the facades, would provide a far higher quality scheme to modern standards with new foundations, whilst retaining and improving the streetscape. The existing accommodation would therefore be replaced with new built, lower density, larger family homes, particularly houses. This was the proposal which was current at the time of the CPO inquiry on 17 August 1999.

16. The subject property was the only one for which compulsory powers were required. The Inspector’s recommendation that the CPO be confirmed was accepted by the Secretary of State. The Inspector’s conclusions were as follows:

“24. The exact nature of the proposals for the Marcia Road area has evolved since the Order was published. The current scheme is to redevelop the Order block and its surroundings, as opposed to earlier ideas of re-conversion, or preserving the facades and carrying out rebuilding behind. In my view this has made no practical difference to the objectives of the Order. The objectors have indicated that they were aware of the revision and the majority of local residents supported redevelopment. I am satisfied therefore that no one has been prejudiced by the revised nature of the proposals.

25. The block containing the Order property did not appear to be in an unreasonable condition and would in my opinion be physically capable of refurbishment. There is no evidence to indicate whether resources are available to the leaseholder to fund her share of the cost of necessary repairs involved in such a scheme. The Council has indicated this is not a course of action it intends to pursue as freeholder. And, contrary to the stance of the objectors, I find the weight of evidence supports the view that the works involved in the comprehensive refurbishment of the Order block to comply with modern standards would be significant. Taking the above into account, and the reports on the general condition of properties in the street, and other difficulties which could arise, I think it less likely that the Order block would be refurbished if the Order is not confirmed.

26. The proposals for the redevelopment of Marcia Road accord with the housing and planning policies of the UDP. They are also consistent with the Council’s housing strategy to create larger family homes to address the acute shortage of this type of accommodation within the borough. Redevelopment would reduce the number of units of housing accommodation in the Marcia Road area. It would however replace the mainly flatted accommodation, of which there is no shortage in the borough, with 88 modern dwellings, mostly of a size to suit larger families. Retention of the Order property would diminish the desirable gain in providing family accommodation that would be realised from redevelopment.

27. The objection relating to matters of valuation and compensation does not concern the merits of the Order. I see no reason to doubt the Council’s assurance that it would make every effort to meet Mr Trew’s wish to stay within this area by rehousing him locally in the event the Order is confirmed and he is made homeless.

28. The acquisition of the Order property would result in a significant qualitative housing gain by the addition to the housing stock of the type of accommodation for which there is a clear need in the borough. In my view this amounts to a compelling case in the public interest for confirmation of the Order.”

### **Case for the Claimant**

17. Mr Lee’s written evidence consisted of a document which he had submitted to the acquiring authority in November 2003. It suggested that the value of the subject property was £95,000. He frankly admitted, however, that the original purpose of that document had been to persuade Mr Mayne to agree that his valuation was far too low and that the figure of £95,000 included a margin for negotiation. He considered that the value of the subject property at the relevant date was £87,500. In support of this figure he produced details of eighteen 1 or 2

bedroom flats in the SE1 and SE17 postal districts where the prices – either achieved or quoted – in 1999 and 2000 ranged from £84,950 to £159,995.

18. In addition to these comparables Mr Lee pointed out that, in November 1999, HM Land Registry and Property Price Postcode Search showed that the average flat price in postcode district SE1, ward code 5 was £85,723 in the last quarter and that the equivalent figure in postcode SE17, ward district 3 was £94,129.

19. Mr Lee accepted that extrapolation of values by reference to house price indices was a hazardous basis for valuation. Nevertheless, in December 1987 the acquiring authority's valuer had assessed the value of the subject property at £39,000. That valuation was referred to in the authority's offer notice to the claimant and Mr Trew, which confirmed that they had the right to buy the flat under the Housing Act 1985, s.125(1) (as amended). The relevant valuation date for that purpose was 9 December 1986. If that valuation were extrapolated forward to the valuation date in accordance with the Halifax and Nationwide house price indices, the resultant values would be £82,950 and £80,293 respectively.

20. Mr Lee added that the indices related to the whole of greater London and did not reflect the larger increases in value experienced in central London locations over the relevant period. Moreover, the right to buy valuations excluded tenant's improvements. In fact, the claimant had carried out significant improvements, and these should be reflected in the valuation for compensation purposes.

21. Mr. Lee said that Marcia Road was a desirable and marketable residential location. There was nothing wrong with its streetscape of Victorian villas in a tree-lined road. The building of which the subject property formed part was not in any worse structural condition than most buildings of similar age and type in London in private ownership which had been converted to form flat accommodation of similar style and class. His survey of the building had not shown any defects that would have had an impact on market value. He did not accept Mr Mayne's contention that the neighbouring buildings in Marcia Road and Penry Street were generally in such poor structural condition that they would have had an adverse impact on the value of the subject property. In any event, if the condition of the housing stock in Marcia Road had seriously deteriorated, this was due to the acquiring authority's failure to comply with its obligations as landlord and should be disregarded.

22. Mr Lee did not think that the prices paid by the acquiring authority for other flats in Marcia Road reflected their unblighted market value. They appeared to be artificially depressed by the acquiring authority's incorrect assertion that there were environmental factors that were detrimental to open market values generally in Marcia Road. Moreover, the consulting engineer's report prepared for the acquiring authority showed that, in contrast to the subject property, all four buildings in which it had acquired flats in 1988 had significant structural problems. In addition, 19E Marcia Road, which was acquired by the authority in 1989, had been occupied by squatters and vandalised.

23. Mr Lee also referred to the acquiring authority's justification of the CPO on the grounds that the housing mix in Marcia Road/Penry Street did not comply with the modern standards referred to in the UDP. Whilst these requirements were relevant to current planning proposals, they could not be imposed retrospectively on existing buildings and would not be reflected in the open market value of such buildings.

### **Case for the Acquiring Authority**

24. In arriving at his valuation of £55,000, Mr Mayne had regard in particular to the prices paid by the acquiring authority in 1998 and 1999 for properties in Marcia Road. He said that, with the exception of 19E, those acquisitions had been by agreement at figures that were felt by both the purchaser and the vendor to represent the fair and full value. Those prices were as follows:

32E	£40,000
37B	£48,000
56F	£59,000
83D	£55,000

25. All four flats were in lateral conversions. 37B was on the ground floor, 83D on the first floor and the remainder on the second floor. 32E had one bedroom. The other three all originally had two bedrooms, but 56F had been converted into three bedrooms.

26. In addition, 19E was acquired under a Court Order in August 1999 for £32,500. It was a one bedroom, second floor flat in a lateral conversion. It had been squatted and therefore was in very poor order, requiring substantial reinstatement of bathroom and kitchen fittings and redecoration. This condition had been reflected in the valuations prepared by two independent firms of chartered surveyors at the date of possession.

27. Mr Mayne recognised that it could be argued that these comparables did not provide true open market evidence. He considered, however, that they were as close to such evidence as could be achieved in Marcia Road, as he believed that no re-sales had ever taken place following exercise of a right to buy, except for the purchase of 26B by Galliard Homes, the eventual developers of the street. The developers paid £105,000 for that three bedroom maisonette in 1999. They were special purchasers, however, and Mr Mayne estimated that its open market value at the valuation date would have been £90-95,000, ignoring any bid from a special purchaser.

28. Mr Mayne also produced a schedule of 40 flats which had been sold some 9 months either side of the valuation date. Sixteen of these flats had one bedroom and the others were a mixture of studio, two and three bedrooms. The flats were situated in the SE1, SE15, SE16 and SE17 postal districts and the prices achieved ranged from £30,000 to £123,500.

29. Mr Mayne also referred to two independent valuations of the subject property which had been prepared on the instructions of the acquiring authority, based on inspections carried out on the valuation date. Andrews and Robertson of Camberwell Green, London, SE5 had valued the property at £52,000 and Burnet Ware and Graves of Peckham Rye, London, SE22 had reported at £50,000. These figures were both produced by chartered surveyors who were the valuation partners of their respective practices. They had extensive experience of valuing property in Southwark and acting against the acquiring authority in regeneration projects where compulsory powers were used.

30. Mr Mayne said that he had had regard to the following material considerations when preparing his valuation:

“That Marcia Road/Penry Street was a Council estate and tenants were nominated into vacant units from the top of the Council waiting list according to need.

Marcia Road/Penry Street estate had a disproportionately high number of one bedroom flats and this I understand leads to a high turnover rate of tenants.

Of the 141 units of accommodation only seven had bought under the right to buy which for street properties represents a very low proportion and may be indicative of the poor regard in which the estate was held by tenants.

The extensive consultation and survey results of residents gave a clear preference for demolition and very few took up their right to return to the new housing.

The Victorian buildings were not of a high standard and the effects of the lateral style of conversion with removal of the rear additions had been severely detrimental.

The location of Marcia Road between the rear of the Old Kent Road shops and Mandela Way Industrial Park is a factor to consider when examining comparables.

A block of flats had been built on Marcia Road for a rough sleepers initiative and a treatment centre for drug addicts was on the corner of Old Kent Road and Penry Street.

The Old Kent Road at this time was a centre for nightlife, clubs, late opening pubs and take-aways. Some of these establishments have since been converted to residential including the well known Old Kent Road Gin Palace, on the corner of Marcia Road and Old Kent Road.

The mature trees lining the street, although attractive, had caused many additional problems to the buildings and were all removed for the development.

The ground conditions in Marcia Road were so poor that the new build houses foundations were piled to a depth of 40 feet.”



## Conclusions

31. On 14 January 2005, accompanied by both expert witnesses, I visited Marcia Road and the surrounding area, inspecting externally various flats which had been referred to as providing comparable evidence. Before I state my conclusions in the light of those inspections, I deal with a number of matters which arose at the hearing.

32. Firstly, an important difference between the parties relates to the nature of the locality in which the subject property was situated. The point is of significance, because any reduction in value which was due to the scheme underlying the acquisition must be ignored. For this purpose I consider that the scheme was the acquiring authority's proposal to redevelop the whole of Marcia Road and Penry Street, which it resolved to do in the middle of 1997. Although the CPO related to the subject property only, the acquiring authority was acquiring all the properties in those two streets as part of a single scheme.

33. Mr Lee considered that Marcia Road was a desirable and marketable location. His approach was supported by the claimant, who said:

“I lived at 55E Marcia Road from 1984 to 1991 and in that time I never experienced any problems with the property, local environment or otherwise. In fact quite the opposite, I found the area to be friendly, safe and convenient for local amenities and travel within central London and outside. In 1991 due to the breakdown of my relationship with my then partner, I purchased his share of the property, moved out of the property and rented it to him, this being the most reasonable solution to the situation at the time. From 1991 to 1997 when the regeneration programme was introduced, I continued to visit the property on a regular basis and there were still no problems with my property, the environment or any complaints from known residents with whom I spoke. In that time if anything, the area had even more amenities with the opening of a large Tesco store across the road and several other large retail establishments opening within a short distance of Marcia Road.”

34. Mr Mayne, on the other hand, took the view that Marcia Road suffered from extremely adverse environmental and social conditions.

35. Having carefully considered all the evidence on this issue, I prefer the evidence of the claimant and Mr Lee to that of Mr Mayne, despite the fact that the latter was involved in the Marcia Road regeneration project from its inception.

36. In my judgment, the most reliable evidence of the residents' attitude towards the neighbourhood is provided by the report from the acquiring authority's Director of Housing to the Housing Committee meeting on 5 June 1997. That report, which was seeking to persuade the Committee of the need to regenerate the street, can be expected to have highlighted any unsatisfactory aspects of the existing conditions. Under the heading “History and Option Appraisal” the report said:

“Tenants have expressed concern for some time over the state of repair of the properties. Also raised has been the darkness of the street especially in summer when the narrow street bordered by three storey properties on either side is made more gloomy still by the large trees that line it. Noise nuisance from the industrial premises behind the street has also been the subject of tenants’ complaints.”

37. Clearly, the general state of repair of the properties in the street; the restricted natural light aggravated by the large trees; the proximity to the Old Kent Road; the neighbouring factories and the fact that Marcia Road/Penry Street was a council estate are all matters which must be taken into account when considering the comparability of prices paid for other flats in the area. Having carried out external inspections of those properties, however, it is in my view quite possible for a valuer to make the necessary adjustments; there were no environmental or social conditions in Marcia Road which were so extreme as to justify the sales evidence produced by Mr Lee being totally disregarded.

38. There was nothing in the June 1997 report by the Director of Housing, or in any other written material submitted to the Tribunal, to suggest that Marcia Road suffered to any unusual extent from the problems associated with drug addiction or alcoholism. It is in my view inconceivable that the Director of Housing would not have drawn his Committee’s attention to such problems if they had existed. Mr Lee suggested that the drug treatment centre and the home for rough sleepers were designed to serve the area surrounding the northern part of the Old Kent Road in general rather than Marcia Road in particular and that their precise location depended simply upon the availability of suitable accommodation. Mr Mayne was unable to suggest any reason why it was particularly appropriate for these facilities to be located in Marcia Road. I accept Mr Lee’s opinion on this matter. In any event, there was nothing about the external appearance of either building to indicate the use to which it was being put.

39. Nor was there any independent evidence to support Mr Mayne’s suggestion that social conditions in the area were adversely affected by the large number of one bedroom flats. His assertion that such accommodation led to a high turnover rate of tenants was contradicted by the Director of Housing’s report, which stated that the tenants interviewed in connection with a demographic survey undertaken in Marcia Road during April 1997 had an average length of tenancy of eight years. Nor does the fact, on which Mr Mayne also relied, that tenants were nominated to vacant flats in Marcia Road from the top of the council waiting list according to need mean that conditions in that road were any worse than in any of the large number of others in Southwark owned by the acquiring authority, where the nomination basis was similar.

40. Mr Mayne’s approach is in my judgment also not supported by the fact that most residents demonstrated a preference for the existing houses to be demolished and rebuilt. This, it seems to me, simply reflects the fact that demolition was likely to result in rather less inconvenience to the existing tenants than the three available alternatives, namely programmed repairs, comprehensive repairs and radical remodelling. Similar considerations apply to the unwillingness of most decanted tenants to return to the redeveloped estate; such a course of action would have involved a duplication of the disruption which inevitably accompanies the process of moving home.

41. As for the limited number of tenants who had exercised their right to buy a flat in Marcia Road, that in my view is not surprising, given that the unsatisfactory nature of the original conversion works carried out by the acquiring authority had resulted in continuing and costly repairing liabilities, for a proportion of which purchasers of long leases in the street would assume responsibility. The existing tenants in the street were well aware of the poor state of repair of many of their properties. It is true that the service charges actually paid by the claimant for the subject property were modest. As Mr Mayne explained, however, this was the result of the acquiring authority's inefficient re-charging of repairs expenditure to its long lessees. The long lessees, nevertheless, were legally entitled to bear the appropriate proportion of the costs of repair and, apparently, now do so.

42. The second matter to which I should refer relates to the prices paid in 1998 and 1999 for properties in Marcia Road, upon which Mr Mayne placed particular weight. In his expert report he said:

“I always recommend from the beginning of the acquisition process that owners appoint a valuer to act on their behalf whose fees will be met by the Council.”

43. Later, he said:

“When looking at the evidence for comparable sales I believe that strong regard must be had to properties acquired by the Council in Marcia Road during 1998 and 1999. These acquisitions were made by agreement at figures that were felt by both the purchaser and the vendor to represent the fair and full value of those properties in Marcia Road. One flat was acquired by direction of the Court following two independent valuations from firms of chartered surveyors”.

44. Towards the end of the hearing I asked Mr Mayne if he could confirm that the owners of the four flats purchased in 1998 had been represented by surveyors. He replied that he would have to consult his files to answer that question. Having done so, Mr Mayne wrote to the Tribunal and advised that none of the owners had been so represented.

45. These comparables constituted an important part of Mr Mayne's evidence. Their weight would obviously be weakened considerably if the owners had not received professional valuation advice, particularly since they were agreed at a time when many of the flats in the street were empty. In my judgment, the manner in which this evidence was produced to the Tribunal was misleading.

46. Mr Mayne also supported his valuation by reference to the purchase by developers of 26B Marcia Road in 1999. He referred to that transaction in the following terms:

“26B Marcia Road was a three bedroom maisonette vertical conversion within a single house on the first and second floors. The property retained its rear extension and was a spacious fully refurbished maisonette that the owner had rewired, installed new central heating, fitted kitchen, new bathroom and wired smoke alarms and fire doors and re-plastered.

It was felt that there was insufficient reason for the Council to acquire the leasehold interest given that the property had not had its rear addition removed or suffered from a lateral conversion and any redevelopment could easily leave the house in place.

Subsequently following the sale of the property subject to the lease the decision to go for a new build solution was made and the developers eventually bought out the owner of the flat in 1999.

The developer paid £105,000 as a special purchaser for the maisonette as it was worthwhile for the developer (to) have complete control, the build would be simpler and the existing house would stand out from its adjoining new build houses.

26B Marcia Road is not a direct comparable as the type of conversion, size and condition were different. It is relevant as it was not a Council acquisition but acquired in the open market by a special purchaser. It is difficult to estimate *how much over and above open market value* the developers as special purchasers were prepared to pay.

Having inspected the property in 1998 I would estimate that its open market value as at 28 February 2000 would have been in the region of £90-95,000 ignoring any special purchase bid.” (Emphasis added).

47. When 26B was purchased in 1999 a large proportion of the flats in Marcia Road had been vacated by their tenants and many had been occupied by squatters and vandalised. Far from being a straightforward purchase in the open market by a special purchaser as suggested by Mr Mayne, the transaction took place at a time when the area was severely blighted. It is plain from answers he gave in the course of his oral evidence that Mr Mayne was fully aware of the unsatisfactory conditions in Marcia Road in 1999. His failure to mention them in his written report was regrettable.

48. The final price paid in Marcia Road which was relied upon by Mr Mayne was the £32,500 paid for 19E. I place little weight on that transaction, given that the price was determined by the Court without the benefit of any evidence from the owner. I obtain no assistance from any of the prices paid for properties in Marcia Road.

49. Thirdly, Mr Mayne relied almost exclusively on evidence of sales by auction, which he considered offered the best form of evidence demonstrating the value of the subject property. Mr Lee, on the other hand, considered that auctions were not the preferred method of disposal of a flat which, like the subject property, was in good condition and located in a reasonably central and pleasant area. I consider that I should have regard to the sale prices of those properties which I find to be most comparable to the subject property, irrespective of the method of disposal chosen by the owner.

50. Fourthly, Mr Mayne pointed out that Mr Lee’s comparables consisted of asking prices and not sale evidence. Although strict rules of evidence do not apply to proceedings determined in accordance with the simplified procedure (rule 28(10)), I consider that Mr Mayne was right to express caution about the reliability of asking prices as opposed to prices

actually achieved. On the other hand, Mr Mayne had made no enquiries of his own to ascertain whether the properties cited by Mr Lee had been sold and, if so, at what price, even though he had been provided with details of those properties long before the hearing. I therefore allowed Mr Lee to adduce further evidence to demonstrate the sale prices achieved. He did this by producing copies of a limited number of Land Registry certificates.

51. Fifthly, when applying the evidence of the comparable transactions to the subject property, it is necessary to bear in mind its condition and the condition of the building of which it formed part, 55 Marcia Road.

52. Mr Mayne produced a copy of the 1996 option appraisal study, prepared by the Southwark Building Design Service and referred to in paragraph 9 above. He also produced copies of two reports which had been prepared for the acquiring authority by Mr L W Kemp, CEng, MICE. The first was dated July 1998 and was a preliminary report on the condition of the properties in Marcia Road, based upon limited inspections of accessible properties. The second was dated 6 July 1999, shortly before the CPO enquiry on 17 August 1999. It related to No.55 only. The authors of these reports did not give evidence before me, although Mr Kemp had given evidence at the CPO enquiry. Mr Mayne's comments on condition were as follows:

“Several condition surveys of the buildings in Marcia Road and Penry Street had been carried out and were subsequently presented at the public enquiry into the Compulsory Purchase Order. Those reports have been made available to the Tribunal.

The Flat 55E was kept in good decorative condition and was generally well cared for...

One of the claimant's arguments has been that the flat 55E Marcia Road in isolation was sound and in a decent condition and did not need demolishing. When taking into account its situation in the block of six flats laterally converted and the remainder of the properties on the Marcia Road/Penry Street estate the Council and the Inspector at the public enquiry took a different view.

The condition of this flat within the block cannot be considered in isolation from the structure and environment of the entirety of Marcia Road and Penry Street when considering the value of 55E Marcia Road.”

53. Mr Lee said that his survey of No.55 had not revealed any defects which would have had an impact on market value. As well as being a chartered surveyor, Mr Lee is a Fellow of the Association of Building Engineers. He has been in practice as a valuer and surveyor in central, south and south-west London for some 24 years and has undertaken more than 30,000 professional commissions. He was a straightforward witness. I accept his evidence on the condition of the building. There is in my judgment nothing in the Inspector's conclusions on the CPO enquiry to show that it was wrong. The significant works which the Inspector found to be necessary at No.55 were required in connection with the comprehensive refurbishment of the existing building in accordance with modern planning requirements, not the maintenance of the premises in their existing form. I also accept Mr Lee's evidence that the structural condition of the neighbouring buildings would not have affected the value of the subject property adversely. It seems to me unlikely that most potential purchasers, fresh to the scene,

would have been aware of the structural weaknesses in neighbouring properties, or that the costs of maintaining them were proving to be excessive. The past service charges payable for the subject flat had been modest and would not have put a prospective purchaser on notice of a problem.

54. In view of my conclusions on this issue, it is not necessary for me to consider whether, in law, the defects in the neighbouring buildings should be disregarded for the purposes of assessing compensation.

55. In the light of these considerations and my visit to the area, my conclusions on the comparable evidence are as follows. I obtain no assistance from the prices paid for flats in Marcia Road in 1998 and 1999 for the reasons I have given. The most reliable indication of value is to be obtained from flats which were sold within, say, nine months of the valuation date and which, like the subject property, are located in the close vicinity of the northern section of the Old Kent Road, which for this purpose I define as lying between the junctions with Tower Bridge Road (A100) to the north and Trafalgar Avenue (B215) to the south. There are three long leasehold flats in that category in respect of which satisfactory evidence of the sale price was provided. They were all sold by auction. I bear in mind the matters mentioned in paragraph 37 above and I would comment briefly on each of the three flats as follows:

<b>11 Preston House, Preston Close, SE1</b>	Studio. 2 <sup>nd</sup> floor. Sold 9 February 2000 for £48,000. Fairly unattractive block in significantly worse location.
<b>150 Oxley Close, SE1</b>	Studio, 2 <sup>nd</sup> floor. Sold 26 April 2000 for £53,000. Broadly comparable block. Broadly similar location.
<b>Flat 3, Stewart House, Leroy Street, SE1</b>	1 bedroom. 1 <sup>st</sup> floor. Sold 30 November 2000 for £76,000. Less attractive block in somewhat better location.

56. I take into account the fact that property values were rising strongly in the period during which these sales took place and I find that the value of the subject property at the valuation date was £75,000.

57. I have not overlooked the fact that two local firms of chartered surveyors valued the subject property at the valuation date at figures which were substantially below £75,000. The valuers concerned have since retired and did not give evidence. Their firms, however, supplied details of the comparables upon which the valuations had been based. In the case of Burnet Ware and Graves, these included the prices paid by the acquiring authority for 32E, 37B and 83D Marcia Road and that information had been given to them by the other valuers, Andrews and Robertson. In my judgment little weight is to be given to valuations which could not be tested in cross-examination and which were based in part on prices which were agreed without professional valuation advice when the area was blighted. Moreover, although the two valuations were stated to have disregarded the CPO, both reports referred to the problems associated with squatters in the street. When this was put to Mr Mayne, he fairly said that he

could not be sure which aspects of the scheme had been disregarded by the valuers. I agree and obtain no assistance from the two valuations.

58. Nor do I consider that Mr Lee's check valuations, by reference to average prices in late 1999, with no details of the flats to which they related, or by reference to the right to buy valuation of the subject flat as at December 1986, are of any material weight by comparison with up-to-date comparable evidence on which my valuation of £75,000 is based.

59. I therefore determine that the compensation payable for the leasehold interest in the subject property is £75,000. It is agreed that the claimant's proper legal costs in connection with the transfer, surveyor's fee based on the final edition of Ryde's scale before its abolition, and statutory interest are payable in addition.

60. In proceedings determined in accordance with rule 28 no award is made in relation to costs unless the Tribunal regards the circumstances as exceptional or an offer of settlement has been made and the Tribunal considers it appropriate to have regard to the fact that such an offer has been made. I intend to make no order as to costs unless, within fourteen days of the date of this decision, either party makes a written application for costs. A copy of any such application should be sent simultaneously to the other side, who may submit written representations thereon within four weeks of the date of this decision. Any application for costs should be accompanied by a detailed explanation, together with supporting documentation, of the amount claimed.

27 January 2005

N J Rose FRICS

#### **Addendum on costs**

61. I have received written submissions on behalf of the claimant, seeking legal costs of £1,350 plus VAT and surveyors' fees of £6,533 inclusive of VAT. For the claimant it is said that there was no meaningful dialogue between the parties before the dispute was referred to the Tribunal, because the acquiring authority's representative at the two meetings that took place between surveyors was not authorised to negotiate. During the first meeting it was suggested that expert reports be exchanged. Whilst the claimant's surveyor's report was disclosed, the acquiring authority only produced the valuations of Andrews and Robertson and Burnet Ware and Graves. A further meeting took place at a late stage in the proceedings. On this occasion Mr Mayne did attend, but he stated that he could not revise the acquiring authority's offer. He then informed Mr Lee that he would be producing an expert report of his own. In the absence of an expert report from the acquiring authority there was no possibility of

agreeing a statement of issues. Mr Mayne's report was delivered to the claimant's solicitor one day late and no copy was sent to Mr Lee.

62. The acquiring authority resist the claimant's application. They say that considerable correspondence passed between the parties, both before and after Mr Lee was instructed. It was not suggested that expert reports be exchanged at an early stage, but that the valuation material and supporting comparable evidence be exchanged and this was done. If Mr Lee chose to disclose his expert report then, that was a matter for him. The acquiring authority's expert report was delivered to the claimant's solicitor on the last date specified by the Tribunal. Both parties sent their reports to the opposing solicitor and neither sent a copy to the opposing expert. Although it did not prove possible to agree a statement of issues, this was not due to the absence of the acquiring authority's expert report. The acquiring authority have not taken a difficult approach to the acquisition. They tried to act professionally and reasonably at all times; indeed it was they who applied to the Tribunal.

63. Rule 28(11) of the Lands Tribunal Rules 1996 provides that, in cases conducted in accordance with the simplified procedure, no award shall be made in relation to the costs of the proceedings, save that the Tribunal may make an award of costs in cases in which the Tribunal regards the circumstances as exceptional. It appears from the correspondence before me that one of the main reasons why the meetings between the parties' professional representatives proved inconclusive was their fundamentally different approach to the nature of the location of the subject property. Mr Mayne put it this way in a letter to Mr Lee dated 29 August 2000:

“I am unsure where to go from here other than the Lands Tribunal as I do not see us being able to bridge the gulf between the two views particularly the effect on value of it being a council street with structural and social problems and your view of the council having caused these problems thereby reducing values.”

In the event I found that Mr Lee was right in suggesting that the prices paid for properties in Marcia Road had been affected by blight resulting from the acquiring authority's activities. The fact that Mr Mayne was wrong in his approach is not, however, in my judgment a matter which justifies a departure from the general rule of costs in simplified procedure cases. Nor am I satisfied that the acquiring authority's failure to submit their expert report in advance of the date specified by the Tribunal was unreasonable or contributed to the failure to agree a statement of issues; nor that there is any significance in the identity of the claimant's representative on whom the report was served.

64. What in my view does make the circumstances of this case exceptional, however, is the misleading way in which Mr Mayne presented to the Tribunal his principal evidence, namely that relating to the four flats in Marcia Road purchased by the acquiring authority in 1998 and the sale of 26B Marcia Road in 1999. The reasons why this evidence was unsatisfactory were explained in paragraphs 45 and 47 of the decision. In my opinion, such behaviour by an acquiring authority's expert witness is wholly exceptional and justifies an award of costs against them. The acquiring authority suggest that there was some duplication in the work undertaken by the claimant's expert and her solicitor. It is not possible on the material before me to draw a conclusion on that suggestion. I therefore order that the acquiring authority shall pay the claimant's costs of the reference, such costs to be agreed or in default of agreement to be the subject of a detailed assessment by the Registrar on the standard basis.



Dated: 18 April 2005

N J Rose FRICS