



ACQ/12/2006

ACQ/13/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – Compulsory Purchase – dwelling houses – acquisition under Housing Act 1985 – procedure – application for adjournment refused – lack of direct comparables – residual method used – compensation awarded of £69,000 and £75,000 respectively

IN THE MATTER OF TWO NOTICES OF REFERENCE

BETWEEN

HEMCOMP LIMITED

Claimant

and

BIRMINGHAM CITY COUNCIL

**Acquiring
Authority**

Re: 270 Monument Road, Birmingham, B16 8XF

AND

HEMCOMP LIMITED

Claimant

and

BIRMINGHAM CITY COUNCIL

**Acquiring
Authority**

Re: 485 City Road, Ladywood, Birmingham, B17 8LH

Before: A J Trott FRICS

**Sitting at Birmingham Civil Justice Centre, Priory Courts,
33 Bull Street, Birmingham, B4 6DS
on 28 January 2008**

Mr Jeremy Lincoln-Lewis of Lincoln-Lewis & Co, Solicitors, for the claimant
Reuben Taylor instructed by Legal and Democratic Services, Birmingham City Council for the
acquiring authority

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The following case is referred to in this decision:

Snook and others v Somerset County Council [2005] 1 EGLR 147

The following cases were also cited:

Garrod v London Borough of Newham Lands Tribunal reference ACQ/96/2002

Essex County Showground Group Limited v Essex County Council Lands Tribunal reference ACQ/120/2004

DECISION

Introduction

1. These are two references to determine the amount of compensation payable in respect of the compulsory acquisition of two dwelling houses at 270 Monument Road, Edgbaston, Birmingham B16 8XF (reference ACQ/12/2006) and 485 City Road, Ladywood, Birmingham B17 8LH (reference ACQ/13/2006). The claimant in both references is Hemcomp Limited and the acquiring authority is Birmingham City Council.

2. The council compulsorily acquired both properties under section 17 of the Housing Act 1985. 270 Monument Road was acquired under the Birmingham (Monument Road, Edgbaston) Part II Housing Compulsory Purchase Order 1999. The land was vested in the Council on 23 October 2000 (the valuation date) under the Compulsory Purchase (Vesting Declarations) Act 1981. 485 City Road was acquired under the Birmingham (City Road, Ladywood) Part II Housing Compulsory Purchase Order 1999. It was vested in the Council on 15 May 2000 (the valuation date) under the 1981 Act.

3. Mr Jeremy Lincoln-Lewis, a solicitor with Lincoln-Lewis & Co of Birmingham, appeared on behalf of the claimant. He explained at the hearing that he had only been instructed on 25 January 2008 and that his instructions were solely to apply to the Tribunal for an adjournment of the proceedings.

4. For the acquiring authority Mr Reuben Taylor called two expert witnesses, Mr Matthew Clarkson MRICS, a Senior Valuer with Birmingham Property Services of Birmingham City Council and Mr Barry McPartland, a Valuer also employed by Birmingham Property Services.

Facts

270 Monument Road

5. 270 Monument Road is located approximately 1.5 kilometres south west of Birmingham City Centre. It is a Grade II listed semi-detached house constructed in approximately 1890. It is of brick construction with a pitched slate roof and a stucco front elevation. It comprises five bedrooms, two living rooms, a kitchen and a bathroom. There is a small front garden and a large back garden, measuring approximately 40m in length. A passageway to the side (south) of the house connects the two. The property is located in a predominantly residential area with a mixture of styles and sizes.

6. At the valuation date (23 October 2000) the property was in a dilapidated condition and was uninhabitable. The ground floor windows were boarded up and the first floor windows at the front were all broken, as were some of those at the rear. The roof, roof covering, eaves, soffits, fascia boards, gutters and pediment were all damaged. There was evidence of water

penetration and rot. The solid tiled ground floor was breaking up. Large areas of ceiling and plaster were missing. There were no live mains services or wiring and all fittings had been removed. The staircase was missing. The ground floor kitchen and toilet had been stripped out. The gardens were overgrown.

7. Planning permission was granted in 1966 for the conversion of the property into four self-contained flats. The parties are in dispute as to whether this permission was implemented.

485 City Road

8. 485 City Road is located approximately 3.5 kilometres west of Birmingham City Centre. It is a substantial three bedroom two storey semi-detached house with two further rooms in attic accommodation served by dormer windows to both the front and rear elevations. The property is of traditional brick construction under a pitched slate roof. There are bay windows at the front at both ground and first floor levels. There is a small front garden with a car parking space and a rear garden extending to some 30 metres. The house was built in approximately 1910 and is situated in a predominantly residential area.

9. At the valuation date (15 May 2000) the exterior of the property was in poor repair and needed refurbishment. The roof also required repair. Internally all the windows were boarded up and all the kitchen and bathroom fittings were missing except for a toilet pan. Fireplaces had been removed. Areas of plaster were missing or damaged. Parts of the first floor floorboards were missing. Overall the property required full internal refurbishment although there was no evidence of structural failure. There were a number of outhouses in the rear garden one of which had no roof and was approaching dereliction. The back garden was overgrown.

The application for an adjournment

The case for the claimant

10. Mr Lincoln-Lewis was instructed to apply for an adjournment of the hearing. He said that the claimant had made a number of unsuccessful requests to the acquiring authority for copies of the trial bundle. It had not seen that bundle until the morning of the hearing. Nor had the claimant received copies of the acquiring authority's expert reports when they were lodged and served in April 2007.

11. The acquiring authority had served the trial bundle, and before that the expert witnesses' reports, on Mr Hari Jindal, the sole current director of the claimant company, at both his home address in Birmingham and at the claimant's business address, a post office box number in Southend. The bundle addressed to Mr Jindal's home had been sent by recorded delivery. Mr Lincoln-Lewis explained that Mr Jindal had been ill. He was also not getting on with his family and was shy of receiving documents at his home address. The recorded delivery had therefore not been accepted.

12. Now that the claimant had received the trial bundle it would be possible to advance matters. It had now appointed a firm of valuers, Hadleigh of Harborne, who had accepted instructions. The valuation aspects of the case were important and needed to consider the past position as at the valuation date. The claimant was prepared to proceed on the basis of a fair timescale and the fact that Mr Jindal was in attendance at the hearing showed his intention to move matters forward. It was important that the claimant should be properly and professionally represented. That was now the case and the reference could proceed and be completed within a sensible period. It had been a long time since the general vesting declaration but the finishing post was very clearly in sight.

The case for the acquiring authority

13. Mr Taylor gave the historical context of the references. The compulsory purchase orders had been made in 1999 and the acquiring authority had taken entry of the two properties in May and October 2000. Since that time the claimant had employed a battery of tactics in a vain attempt to challenge the validity of the compulsory purchase orders. An application for judicial review was made to the High Court in September 2002. Mr Justice Sullivan heard this in February 2003 and dismissed it. In doing so he made an order that was, in effect, a civil restraint order against Mr Jindal. The claimant applied for leave to appeal to the Court of Appeal. Pill LJ heard the application in November 2003. The claimant bombarded the Court with applications to adjourn on 31 October 2003 but these were refused and the application was dismissed. An application to restore the application for permission to appeal was heard before Sedley LJ in May 2004 and was refused. Once again the claimant made numerous applications for an adjournment. The claimant began further proceedings before the County Court in 2004. These were struck out in February 2005. The claimant applied for permission to appeal. The application was heard before His Honour Judge MacDuff QC in May 2005. Yet more applications were made for an adjournment, this time based upon Mr Jindal's ill health. There were further applications for an adjournment two days before the hearing. His Honour Judge MacDuff QC heard the case and again struck it out. He expressed considerable scepticism about Mr Jindal's illness and made an extended civil restraint order against him for two years. Mr Taylor said that the claimant had a history of making last minute applications for adjournments based upon factual assertions that could not be proved.

14. The claimant had been sent the trial bundle twice and Mr Taylor was sceptical of its claim that neither had been received. Service had been effected at the addresses notified to the acquiring authority by the registrar and were deemed to have been served in accordance with Rule 54(3) of the Lands Tribunal Rules 1996 (as amended).

15. Failure to proceed would have financial consequences for the acquiring authority. Mr Taylor would be unable to continue to act for it because of other commitments that meant he could not attend a rescheduled hearing until the end of June 2008. The claimant had had an enormous amount of time in which to instruct professional advisers. It had not done so and by its behaviour had shown that it could not act responsibly in litigation. Nothing would be gained from an adjournment because there was no guarantee that the claimant would instruct advisers and no undertaking that the matter would be taken forward in any sensible way. There would be further applications to adjourn. The application was an abuse of process and without merit. It should be refused.

Decision

16. The exercise of the Tribunal's discretion whether to grant an adjournment is governed by the overriding objective to deal with each case justly, as set down in Direction 2 of the Lands Tribunal Practice Directions. The Tribunal expects the parties to assist it to further that objective. When considering the claimant's application it is important to ensure that the references are dealt with expeditiously and fairly (Direction 2.1 (d))

17. It is nearly eight years since the valuation date and since that time the claimant has repeatedly sought to challenge the validity of the compulsory purchase orders. It has failed on every occasion and before every court. The claimant has a history of delay and of seeking adjournments, often at the last minute. It was the claimant who made the references to this Tribunal but it has consistently failed to progress them. It argued before me that it needed to be professionally represented but it disinstructed both the solicitors and the chartered surveyors who acted for it at the time the references were made and it had still not instructed any replacement valuer at the time of the hearing. Mr Lincoln-Lewis said that Hadleigh of Harborne had been instructed but there was no evidence that this was the case. The latest correspondence from that firm was dated 25 January 2008 and said it was prepared to act provided the claimant sent it "copy notices served on all interested parties". It had asked for such notices two weeks previously but it appeared that the claimant had not progressed the matter since that time.

18. The Tribunal consistently and repeatedly advised the claimant to obtain independent professional advice over many months but to no avail. The claimant insisted that Mr Jindal was qualified to act as its expert witness and he submitted what purported to be an expert report on 2 March 2007. When this was queried by the Tribunal the claimant replied on 10 April 2007 that:

"Our expert witness statement was prepared by an expert who was chairman of a firm of auctioneer valuers, surveyors, estate agents with offices in Colmore Row. What do you want more?"

Mr Jindal was present at the hearing and able to give his evidence. Mr Lincoln-Lewis confirmed that Mr Jindal had full authority to act on behalf of the claimant.

19. At the hearing I was not satisfied that, if an adjournment was granted, the claimant intended to progress the references seriously and within a reasonable time. I considered that the application to adjourn was vexatious and that the claimant's intention was to delay the reference further and without good reason. I concluded that the claimant was acting contrary to the overriding objective by its actions and I therefore refused the application.

20. Having delivered this decision, and after a short adjournment, Mr Lincoln-Lewis advised the Tribunal that he was no longer instructed. Both he and Mr Jindal withdrew from the proceedings which continued in their absence. Despite the departure of the claimant I have taken account of the evidence and argument it put forward in its statements of case and Mr Jindal's expert reports.

Compensation: Evidence

270 Monument Road

21. The claimant stated in its statement of case that at the time it acquired the property in mid 1999 the reference land was in use as four self-contained flats occupied by professional people. It said that the rear garden had development potential for two further flats with access to the rear garden from Reservoir Road. The claimant also said that it was in the process of carrying out substantial refurbishment works throughout the building when the property was acquired by the City Council. These works involved putting in new kitchen and bathroom units, renewing the wiring and installing new central heating. The claimant said that these works were well under way and that had it not been for the compulsory acquisition the property would have been completely refurbished and converted. The claimant's builders were in occupation of the property at the time of acquisition.

22. The claim was for £500,000 plus professional fees and statutory interest. This was based upon the sale of 266 Monument Road for £250,000 at around the valuation date. This property was said to have half the land of number 270. The claimant estimated that the value of 270 Monument Road as a single family dwelling house by reference to this comparable was £380,000 to £400,000. Later in the statement of case the claimant, relying upon its "long experience in converting and selling flats" estimated the value of each of the four flats when refurbished at £110,000 giving a total value of £440,000. To this was added a further £10,000 in respect of the freehold reversion (the flats presumably being sold on long leases) and £80,000 for the value of the building plot for two new flats. This gave a total value of £530,000. From this was deducted £30,000 in respect of the uncompleted refurbishment works and to reflect the fact that planning permission for the two new flats had not been obtained.

23. In his expert report Mr Jindal said that after the claimant purchased the property in 1999 it commenced refurbishment works and removed all the old kitchen units, bathrooms, fitted wardrobes etc. In order to do this some of the windows were removed. All the plaster was also removed. Mr Jindal said that there was a staircase in the property and that both damp proofing and dry rot treatment had taken place.

24. Mr Jindal valued the property at £540,000 being £450,000 for the existing four flats and £90,000 for what he described as the freehold reversion. From this he deducted the sum of £26,000 as being the cost of outstanding refurbishment works to give a final value of £514,000. He considered the claim of £500,000 "to be very reasonable value". Mr Jindal said that his report was based upon his 50 years experience as managing director of a firm of estate agents, surveyors, auctioneers and valuers.

25. Mr Clarkson for the acquiring authority was the case surveyor responsible for dealing with 270 Monument Road at the time of its acquisition in October 2000. He had inspected the property the day after it was vested in the City Council and he described its condition at that time. He had been unable to ascertain from his inspection whether the property had been converted into flats, although from an examination of the exterior soil pipes at the rear of the

property he could not identify any additional pipe work that would indicate such a conversion. On 2 March 2000 the claimant sent the council a refurbishment programme prepared by its architect. This contemplated a conversion of the property into four flats but the extent of the work required demonstrated that it was in very poor condition.

26. Mr Clarkson had provided a valuation of the subject property for stamp duty purposes on 25 October 2000 in the sum of £70,000.

27. Mr McPartland was not employed by the acquiring authority at the valuation date and he relied upon discussions with Mr Clarkson about the condition of the property at that time. There were no direct comparables of similar houses in very poor condition and so he undertook a residual valuation. He estimated the value of 270 Monument Road when refurbished and in good repair to be £165,000 as at the valuation date. From this he deducted total costs of refurbishment (including finance and profit) of £96,564 to give a rounded open market value of £69,000. His valuation is reproduced as Appendix 1. He did not believe that there was any development potential for the construction of additional flats to the rear of the property because there was no prospect of gaining vehicular access from Reservoir Road. Any hope value for such future extension was reflected in the price paid for comparable properties in Monument Road.

28. The figure of £165,000 for the value of the refurbished property was derived from eight comparable transactions in Monument Road. Two of these, numbers 206 and 267, were not completed and the figures used were asking prices of £160,000 (December 1999) and £165,000 (April 2000) respectively. Only one of the remaining six comparables, number 265, was a sale of a property at or around the valuation date. This semi-detached house sold for £120,000 in July 2000. Three of the comparables were sold nearly two years after the valuation date, namely number 267 at £225,000 (August 2002), number 271 at £215,000 (July 2002) and number 272 at £225,000 (July 2002). The final two transactions were both of number 266 which the claimant used as a comparable and said had been sold for £250,000 at or around the valuation date. It was sold in November 2004 for £165,000 and again in August 2005 for £260,000. Mr McPartland had found no evidence that the property was sold at the valuation date for the amount claimed by Mr Jindal.

29. Mr McPartland explained that he had indexed back the values of Nos.267 and 272 to the valuation date using the Halifax General House Index for the West Midlands area. This gave rounded values of £170,000 and £181,000 respectively. He speculated that the difference in value between the two sales of No.266 Monument Road was due to restoration works.

30. Mr McPartland believed that it would take between 12 to 18 months to restore the property given its condition and the need to obtain listed building consent. In his valuation he assumed a period of 12 months. He took the costs of the restoration works as £49,784, a figure provided by the claimant in a letter to the acquiring authority dated 25 February 2000. At the public inquiry into the compulsory purchase order this amount was analysed, in rounded terms, as £5,300 for decorations, £5,700 for roof repairs and £38,000 for all other work. Mr McPartland considered these amounts to be insufficient to restore the property and convert

it into four flats. The estimate did not take account of specialist items such as the slate roof (the local planning authority had refused to accept artificial slates) or the standard of work required to repair a listed building. The Building Cost Information Service gave the mean average cost to build flats in this area as £64,000 and Mr McPartland expected the cost of converting the subject premises to be well above the average figure. Nevertheless, he adopted the claimant's figure as the cost of restoration as a single dwelling and added a contingency of 30% which he said was higher than normal due to the listed status of the property. He considered that the market for the property would be limited to developers with experience of listed building development rather than other cash purchasers. The property was not mortgageable in its existing condition.

31. Mr McPartland provided an alternative valuation based upon the income that could be derived from the property if converted into four flats. He estimated the net rental value to be £13,500 per annum after refurbishment works had been completed. He capitalised this at a yield of 9.5% to give a capital value of £142,000. The rental yield was derived from the April 2000 comparable at 267 Monument Road (although the transaction was not completed). Mr McPartland concluded that the lower capital value of the completed development combined with the likelihood of higher refurbishment costs for a flat conversion meant that the highest value was represented by the restoration of the property as a single dwelling house.

32. The claimant had not supported the value of the flats that it had adopted when valuing the property at £500,000. Mr Jindal's figures appeared to be based upon current values. Mr Jindal had also assumed the development of two new flats with access from Reservoir Road. Mr McPartland said that his discussions with the local planning authority suggested this was unlikely to happen and noted that no vehicular access was available onto Reservoir Road. Mr Jindal had also deducted token costs of £26,000 for the remaining works. But no refurbishment works at all had been done by the valuation date and these were unfounded figures. Mr McPartland had considered Mr Jindal's valuation but felt that it was not relevant.

485 City Road

33. In its statement of case the claimant said that at the time it purchased the property in 1999 it was in use as a bed and breakfast business producing £187 per day. At the date of entry by the council the claimant said it was undertaking substantial refurbishment and improvement works that included the provision of new double-glazing throughout the building and a refurbished porch. These works had been completed by the valuation date. The claimant's workmen were in occupation when the council took entry.

34. The claim was for £500,000 plus interest and costs. The claimant relied upon a comparable transaction at 527 City Road that had been sold in "about 2002" for £600,000. Allowing for the time difference between the date of that sale and the valuation date, and for differences between the two properties, the claimant said that the value of number 485 was £520,000. From this was deducted the sum of £20,000 in respect of the uncompleted refurbishment works.

35. Mr Jindal also submitted an expert report in respect of this property but this did not add any relevant information that was not contained in the claimant's statement of case. He said that the council had taken documents, files, office equipment and builder's materials that were stored at the property at the date of entry.

36. Mr Clarkson was the case surveyor dealing with 485 City Road at the time of its acquisition in May 2000. He said that he had inspected the property on 23 May 2000, 8 days after the valuation date. He stated that the property was clear of furniture and personal effects and that there was no evidence of refurbishment work having been undertaken. There was no evidence that double-glazing had been installed nor was there any sign of builders having been in occupation.

37. He had provided a valuation of the subject property for stamp duty purposes on 24 May 2000 in the sum of £80,000.

38. Mr McPartland valued 485 City Road at £75,000 (rounded) as at the valuation date. This was based upon £130,000 as the value of the property when refurbished less building costs, contingency, finance and profit amounting to £54,000. His residual valuation is reproduced as Appendix 2. There were no direct contemporary comparables of similar houses in very poor condition.

39. The figure of £130,000 for the value of the refurbished property was derived from the analysis of eight comparable transactions, seven of which were in City Road. Mr McPartland's preferred comparable was a detached 5 bedroom house at 363 City Road. That was on the market in May 2000 for an asking price of £139,000. Mr McPartland adjusted this to allow for it being detached and for negotiations on price.

40. 377 and 423 City Road were also on the market in May 2000 for asking prices of £95,000 and £110,000 respectively. Both were semi-detached properties. 423 City Road subsequently sold in December 2000 for £93,000. The remaining semi-detached comparables in City Road were number 498 (smaller than number 485), sold for £107,000 in September 2000; number 500 (smaller) sold for £105,000 in September 2000; number 504 (larger) sold for £145,000 in September 2000; and number 509 (smaller) sold for £95,000 in October 2000. In addition Mr McPartland referred to 49 Sandon Road, where the council had sold a detached house that was in need of modernisation for £105,000 in November 1997.

41. Mr McPartland said that the claimant was wrong to take the sale of 527 City Road as a comparable transaction. This property had been sold together with number 529 for a total sum of £600,000 in May 2004 and not in "about 2002" as stated by the claimant. The two properties were now occupied together as a residential care home and there was a large three-storey extension at the rear. The nature of their use was different to that of the reference property, they were much larger and were sold four years after the valuation date.

42. In valuing the property Mr McPartland had relied upon Mr Clarkson's reports of its condition as at the valuation date. He concluded that the property required extensive refurbishment and repair both internally and externally. Mr McPartland assumed that such works would take 9 months to complete.

43. He based his estimate of the cost of the refurbishment works on a schedule of works prepared by the council's Housing Department in 2006. This contained an estimate of £42,930. He adjusted this amount to the valuation date, and also to allow for differences between public and private sector tenders, by using the BCIS Quarterly Review of Building Prices for quarter one of 2006 and quarter two of 2000. This gave an adjusted cost figure of £31,250 as at the valuation date. At the hearing Mr McPartland said that in fact the Housing Department's estimate had been produced in the autumn of 2005 and that consequently his cost adjustments had favoured the claimant.

44. Mr McPartland adopted a lower contingency allowance and a lower percentage for risk and profit when compared with his valuation of 270 Monument Road because he considered 485 City Road to be a lower risk with less work required and also to reflect the fact that it was not a listed building.

45. Mr McPartland's valuation was lower than that produced by Mr Clarkson at the valuation date because he had the benefit of the costings prepared by Housing Department that were not available to Mr Clarkson. He had also been able to obtain information about other comparables. Mr McPartland thought that a cash purchaser was more likely to have bought 485 City Road than 270 Monument Road but considered that they would still require a substantial allowance for risk. Due to the extent of the works involved he thought that a developer was the most likely purchaser.

46. There did not appear to have been any serious water penetration over the years between the valuation date and the preparation of the Housing Department schedule of works in autumn 2005. Mr McPartland did not believe that there had been any serious further decay of the property over that period and he had not allowed for any additional costs which, in any event, he considered would not have changed materially.

Compensation: submissions

270 Monument Road

47. Mr Taylor submitted that the correct valuation approach was to look at the sales of comparable properties in good repair and then to adjust for the condition of the subject property. At the date of acquisition Mr Clarkson had obtained details of the asking prices of comparable properties for use in providing a valuation for stamp duty purposes. Mr McPartland had looked at actual sales of which there was a cluster in 2002 at prices between £215,000 and £225,000. He had indexed these values back to the valuation date using the Halifax House Price Index for the West Midlands region. Whilst this index was not

specific to the type of property being valued the result was nevertheless a useful guide and showed values of between £170,000 to £180,000, which appeared a little high compared with the comparables for 2000 that suggested an open market value of £160,000. Mr McPartland's valuation of £165,000 should be accepted once the evidence was examined in the round. Mr Jindal's valuation of £500,000 on the other hand was exaggerated.

48. The Tribunal should reject any suggestion that no discount should be allowed for the condition of the property. 270 Monument Road had been in a terrible state at the valuation date. This was evidenced by the schedule of works that was prepared by the claimant in March 2000, by the report of the inspector following the public inquiry into the compulsory purchase order, by the contemporary photographs and by the evidence of Mr Clarkson who had inspected the property the day after the valuation date. By accepting the claimant's pricing of the schedule of works Mr McPartland had under-valued the cost of the works in the claimant's favour.

49. Mr McPartland was right to make a significant contingency allowance of 30% given the condition of the property and its status as a listed building. The other variables adopted by Mr McPartland in his valuation were reasonable and should be accepted.

50. The claimant argued that the property had already been subdivided into flats. Mr Clarkson said that it was uncertain whether the planning permission granted in 1966 for the conversion of the property into four flats had been implemented. There had been no evidence from the claimant on this point and an inspection of the external waste pipes suggested that such a conversion had not taken place. Nevertheless Mr McPartland had also investigated the consequences for value assuming subdivision of the property into four flats. Having done so he had concluded that the highest open market value was obtained by refurbishing the building as a single-storey dwelling house. There was no evidence that there was any scope to provide a rear access to the property from Reservoir Road and nothing to suggest that there should be an enhanced allowance in respect of the extension of the property. There was nothing about 270 Monument Road that distinguished it from the comparable properties in this respect and any hope value that there might be would be included in the sale price of such comparables in any event.

51. Mr McPartland had erred in favour of the claimant throughout his valuation and had produced a figure of compensation of £69,000 that was fair and reasonable in all the circumstances.

485 City Road

52. The comparable evidence produced by Mr McPartland ranged between £95,000 to £145,000. Its selection of £130,000 as the open market value of the subject property in good condition was therefore towards the top end of this range. The claimant had relied upon the single sale of 527 City Road for £600,000 in 2002. In fact this was a sale of both 527 and 529 City Road in May 2004. It was plain that these were sold together for redevelopment as a residential care home. The price reflected the redevelopment value and the transaction was not

a contemporary sale of a single residential unit. It was incorrect and insupportable to value the property at £500,000 as the claimant had done.

53. There was clear evidence that Mr McPartland's figure of £130,000 was correct. The property was in a poor state of repair. Photographs taken shortly after the valuation date showed this and proved that no work had been done to the property. Mr McPartland's evidence on the cost of repairs should be accepted. There was a specification and costing of works prepared in late 2005. There was no significant difference between the state of the property at that time and at the valuation date and so that specification should be accepted. Mr McPartland had indexed back the cost in favour of the claimant and had used a figure that reflected the proper cost of repairs, albeit one that was probably understated. Mr McPartland had appropriately allowed for all interest, contingency and risk. He had rounded his compensation figure to £75,000 and had erred in favour of the claimant.

54. Mr Clarkson's valuation of £80,000 at the time of acquisition had been done for stamp duty purposes and without the benefit of proper costings or data of comparable sales. Mr McPartland's valuation was to be preferred and Mr Taylor asked the Tribunal to accept his figure of £75,000.

55. Mr Taylor submitted that the case in respect of both properties that appeared in the claimant's documentation (the statements of case and Mr Jindal's expert reports) were full of inconsistencies and were factually inaccurate. The valuations were unsupported by any evidence. The claimant's case amounted to no more than an assertion. Mr Jindal was not a professionally qualified valuer and the Tribunal should give little, if any, weight to the claimant's evidence. The compensation in each case was nothing like £500,000.

Compensation: conclusions

270 Monument Road

56. I do not find the claimant's evidence to be helpful or reliable. There is no evidence to support the claimant's assertion that refurbishment works were well under way by the valuation date or that professional people were occupying the property as four self-contained flats when the claimant acquired the property in 1999. I accept Mr Clarkson's evidence about the condition of the property as at the valuation date and I agree with Mr Taylor's description of it as being in a terrible state. It was, and clearly had been for some time, uninhabitable.

57. Mr Jindal valued the property as four flats, each worth £112,500 in good condition. He offered no evidence in support of this figure. Nor did he provide any written explanation for his valuation of the freehold reversion in the sum of £90,000. His allowance of £26,000 to complete the refurbishment works that he asserted had been commenced was patently too low given the condition of the property at the valuation date. There is no evidence to support the claimant's view that the property has the potential for further expansion by taking access from

Reservoir Road. Mr Jindal's valuation of the property at £500,000 is a gross exaggeration and I attach no weight to his evidence.

58. I consider that Mr McPartland's valuation approach is reasonable in the absence of any direct comparables of the sale of dwellings in disrepair at the valuation date. I also accept that the most likely purchaser for this property is a developer or builder rather than a cash purchaser for owner occupation. His figure of £165,000 for the value of the property as a single dwelling house in good condition was based upon an analysis of a number of comparables. Only one of these, number 265, was actually a transaction reasonably close to the valuation date and was in the sum of £120,000. Two other properties, 206 and 267, were being offered at asking prices of £116,000 and £165,000 some 10 months and 6 months before the valuation date respectively. The other comparables relied upon by Mr McPartland were sold nearly two years after the valuation date and his use of a general house price index to assess their value as at October 2000 can only be an approximation. One of the properties that was indexed by Mr McPartland was 267 Monument Road. That was sold in August 2002 for £225,000 and was indexed back to £170,000 as at October 2000. This property was being marketed in April 2000 at £165,000 (albeit as an income producing investment rather than as a sale with vacant possession). This provides a rough, and reasonably accurate, calibration for the indexing exercise. He also provided evidence about the sale of 266 Monument Road which is the sole comparable relied upon by the claimant. There is no evidence that this was sold "at around the valuation date" for £250,000 as suggested by the claimant. In all the circumstances I consider that Mr McPartland's figure of £165,000 is fair and reasonable.

59. Turning to the costs of refurbishment I accept Mr McPartland's choice of 7% as the finance rate (being 1% above base rate as at the valuation date) and his method of charging interest on the total building costs. I agree with his assumption that the works would take 12 months to complete. I also accept his allowance of 15% of the refurbished value to represent the developer's profit. Mr McPartland adopts the costings of £49,784 for repair and refurbishment that were provided by the claimant on 25 February 2000. A breakdown of this figure was provided on 3 March 2000 in a document that was produced by the claimant shortly before the public inquiry was held into the compulsory purchase order on 9 March 2000. The inspector at that inquiry, whose report was submitted in evidence, made the following observations upon the schedule of works that was the subject of the claimant's costings:

"13. ... Late on Friday 3 March 2000 a schedule of works was faxed to the Council without any indication of who had produced it.

14. The schedule of works has insufficient information of specific relevance to the property, in particular with regard to design and detailing aspects arising from the property's status as a listed building, and there is little reference to the building's extensive dry rot and damp proofing problems. There is no overall quotation from a contractor, there are no surveys or quotations from specialist subcontractors, and it does not demonstrate the level of professional expertise necessary for a project of this kind."

I consider that Mr McPartland has been generous to the claimant in using the figures provided by it, and the provenance of which is unexplained.

60. In his valuation Mr McPartland assumed that the future use of the property would be as a single dwelling house. Both he and Mr Clarkson doubted that the property had been converted into flats. It is not clear, therefore, where the need to obtain listed building consent arises. Essentially, and based upon the valuation assumptions made by Mr McPartland, the proposed works are works of repair (albeit extensive) rather than works of demolition, alteration or extension which would require such consent under section 7 of The Planning (Listed Buildings and Conservation Areas) Act 1990. Under these circumstances I think that Mr McPartland's contingency allowance of 30%, which he acknowledges is higher than normal due to the property's listed status, is too high, although I acknowledge that part of this higher allowance is due to the constraints on the materials that can be used in the repair work. I consider that a significant allowance in this instance would be appropriate and I have taken 20%.

61. Mr McPartland has not taken account of a number of other cost items that a developer would necessarily incur. Firstly, he has not allowed separately for professional fees, but these may have been included within the building costs and in the absence of any explanatory comment in Mr McPartland's evidence I assume that this is the case. Secondly, he has not allowed for the costs that the developer would incur upon acquiring the site, namely legal fees and the then applicable rate of stamp duty (1%). I have assumed that the developer would not need to instruct a site finding agent to identify the acquisition opportunity which would probably be sold by auction or tender. Finally, Mr McPartland has not allowed for the cost of agents and legal fees in respect of the disposal of the completed development.

62. The overall effect of these additional costs is to reduce the valuation to £67,500 as shown in Appendix 3. This valuation also makes a contingency allowance on the finance costs as well as the building costs and derives, rather than assumes, the land cost. Mr McPartland confirmed that there had been no claim for disturbance and the claimant does not qualify for a home loss payment. The claimant's statement of case "seeks compensation in the sum of £500,000 plus interest from the date of entry and professional costs". The claimant did not provide any details of such professional costs. It is known that it instructed the John Hughes Law Practice and Lambert Smith Hampton to make the reference and prepare the statement of case. However, the claimant subsequently disinstructed these firms and then conducted the reference itself. There is no evidence that Lambert Smith Hampton were in negotiations with the acquiring authority prior to the reference. Mr Lincoln-Lewis was instructed to appear before the Tribunal on the limited brief described above. The claimant has failed to provide any details of his pre-reference costs and I therefore make no award in respect of them

485 City Road

63. The expert report produced by Mr Jindal on 6 March 2007 was of no assistance to me and added nothing to the claimant's statement of case. It was, as Mr Lincoln-Lewis said of other correspondence produced by his client "somewhat rambling". The claimant relies upon one comparable transaction, the sale of 527 City Road for £600,000 that was said to have taken place in "about 2002". That comparable was reviewed by Mr McPartland and he quite properly rejected it for the reasons I have given in paragraph 41 above.

64. Mr McPartland adopted a reasonable approach to the valuation of the property given the absence of direct comparables of similar residential properties in poor repair. He relies primarily upon 363 City Road as a comparable for the subject property in good condition. However, that comparable was an asking price rather than an actual transaction and was used by Mr Clarkson when providing his valuation for stamp duty purposes on 24 May 2000. There was other evidence of actual transactions in the vicinity of the subject property most of which had taken place in the autumn of 2000. These ranged from £93,000 to £145,000. In all the circumstances I consider Mr McPartland's valuation of the subject property in the sum of £130,000 at the valuation date, and assuming it to be in good condition, to be fair and reasonable.

65. The costs of refurbishing the property were based upon a schedule of works prepared by the council's Housing Department in autumn 2005. Mr McPartland indexed these costs back to the valuation date but in so doing took a later start date of quarter one 2006. The effect was to reduce the costs figure in the claimant's favour. The adjusted cost used by Mr McPartland was £31,250. I understand that the property was left vacant from the valuation date until the schedule of works was prepared, a period of over 5 years. In my opinion it is likely that there was further deterioration in the condition of the property in that time, although Mr McPartland said that there did not appear to have been any serious water penetration that had exacerbated any decay. Nevertheless, I have made a small adjustment to the cost to reflect this period of vacancy and I have therefore taken the cost of repairs at £30,000. I have assumed also that, as with 270 Monument Road, there should be no separate allowance for professional fees. Mr McPartland has not made such an allowance.

66. I accept Mr McPartland's building period of 9 months and his finance rate of 7%. However, I do not agree that a contingency allowance of 15% is appropriate. This property was not in such disrepair as 270 Monument Road and was not a listed building. The cost of repairs was known with greater certainty. I consider that a contingency of 5% is sufficient in this instance. On the other hand I do not accept that the developer's profit should be as low as 10% of the refurbished value of the property. Mr McPartland explained that he had chosen this figure to reflect the time, effort and risk involved with the project and that he considered this to be less risky than the Monument Road refurbishment. In my opinion this difference is adequately reflected in the level of contingency contained in the two valuations and in both instances I think that a 15% developer's return is appropriate.

67. The overall effect of these changes is to reduce the valuation to £69,500 (rounded) as shown in Appendix 4. In my opinion this underpins Mr Taylor's contention that the valuation produced by the acquiring authority has erred in favour of the claimant. The claimant made no claim in respect of disturbance although it did assert that it had left a number of items at the property that were subsequently removed by the acquiring authority when it took entry. However, I prefer Mr Clarkson's evidence that there was no furniture or effects on the site when possession was taken. The claimant does not qualify for a home loss payment. The situation with regards to costs is the same as for 270 Monument Road and I reach the same conclusion for the same reasons.

Compensation: determination

68. Due to the absence of direct comparable transactions the acquiring authority has relied upon the residual method of valuation. The Tribunal's reservations about this method are well known and were most recently described in *Snook and others v Somerset County Council* [2005] 1 EGLR 147. I disagree with some of the variables used by Mr McPartland in his valuations and this has led to amended figures that are 2% (270 Monument Road) and 7% (485 City Road) lower than those put forward in evidence by the acquiring authority. However, given the recognised difficulties of the residual valuation method, the small difference in the valuation outcomes caused by these amendments and the fact that the acquiring authority has consistently and fairly favoured the claimant when applying the method, I conclude that the compensation payable to the claimant should be that argued for by Mr McPartland. I therefore determine that the acquiring authority shall pay compensation to the claimant in the sum of £69,000 for 270 Monument Road and £75,000 for 485 City Road.

69. The parties are now invited to make submissions on costs and a letter relating to this accompanies this decision, which will only become final when the question of costs has been determined.

Dated 9 April 2008

A J Trott FRICS

APPENDIX 1

270 MONUMENT ROAD: Mr McPARTLAND'S VALUATION

Value following refurbishment:		£165,000
<u>Less cost of works:</u>		
(i) Building works	£49,784	
(ii) Contingency at 30% of (i)	£14,935	
(iii) Interest on capital employed		
(a) 7% of purchase price, say £69,000	£ 4,830	
(b) 7% of (i) + (ii)/2	£ 2,265	
(iv) Developer's profit at 15% of refurbished value	<u>£24,750</u>	<u>£96,564</u>
Value in disrepair		£68,436
		Say £69,000

485 CITY ROAD: Mr McPARTLAND'S VALUATION

Value following refurbishment:		£130,000
<u>Less cost of works:</u>		
(i) Building works	£31,250	
(ii) Contingency at 15% of (i)	£4,687	
(iii) Interest on capital employed		
(a) 7% of purchase price, say £75,000 for 9 months	£ 3,937	
(b) 7% of (i) + (ii)/2 for 9 months	£ 943	
(iv) Developer's profit at 10% of refurbished value	<u>£13,000</u>	<u>£53,817</u>
Value in disrepair		£76,183
		Say £75,000

270 MONUMENT ROAD: LANDS TRIBUNAL VALUATION

Value following refurbishment: £165,000

Less cost of works:

(i) Building works	£49,784	
(ii) Interest at 7% on total cost for half works period (12 months)	£1,742	
(iii) Contingency at 20% on (i) + (ii)	£10,305	
(iv) Selling costs (agent's and legal fees) at 3% of refurbished value	£ 4,950	
(v) Developer's profit at 15% of refurbished value	<u>£24,750</u>	<u>£91,531</u>

Sum for land acquisition costs and finance: £73,469

- (i) Let land value = x
- (ii) Let finance on land value for 12
months at 7% = 0.07x
- (iii) Let acquisition costs (legal fees and stamp
duty) = 0.02x

Therefore land value (x) = £73,469/1.09 = £67,403

Say £67,500

485 CITY ROAD: LANDS TRIBUNAL VALUATION

Value following refurbishment: £130,000

Less cost of works:

(i)	Building works	£30,000	
(ii)	Interest at 7% on total cost for half works period (9 months)	£787	
(iii)	Contingency at 5% on (i) + (ii)	£1,539	
(iv)	Selling costs (agent's and legal fees) at 3% of refurbished value	£ 3,900	
(v)	Developer's profit at 15% of refurbished value	<u>£19,500</u>	<u>£55,726</u>

Sum for land acquisition costs and finance: £74,274

- (i) Let land value = x
- (ii) Let finance on land value for 9
months at 7% = 0.0525x
- (iii) Let acquisition costs (legal fees and stamp
duty) = 0.02x

Therefore land value (x) = £74,274/1.0725 = £69,253

Say £69,500