IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2017] UKUT 373 (LC)
Case No: ACQ/39/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – acquisition of maisonette on blighted estate – choice of comparables to assess open market value – valuation methodology – adjustments – disturbance – Crawley costs where no alternative property yet acquired – compensation determined at £322,070

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

ADRIAN PHILIP GLASSPOOL	**Claimant**
- and -	
LONDON BOROUGH OF SOUTHWARK	**Acquiring Authority**

Re: 49 Cuddington,
Deacon Way,
London SE17 1SR

Before: A J Trott FRICS
on
11 September 2017

Royal Courts of Justice, London WC2A 2LL
- -

The Claimant appeared in person

Mr Jon Abbott, Head of Regeneration North, London Borough of Southwark, appeared for the Acquiring Authority
The following cases are referred to in this decision:

Sachikenye v London Borough of Greenwich (2008) CON/105/2006 and CON/18/2007 (unreported)
Joshua v London Borough of Southwark [2015] RVR 104, [2014] UKUT 511 (LC)
John v London Borough of Southwark [2014] UKUT 538 (LC)
Roberts v Greater London Council (1974) 14 RVR 104
Lancaster City Council v Thomas Newall Limited [2013] EWCA Civ 802

DECISION

Introduction

1. The claimant is Mr Adrian Glasspool whose leasehold interest in a ground and first floor maisonette at 49 Cuddington, Deacon Way, London SE17 1SR ("No.49") was compulsorily acquired by the London Borough of Southwark ("the Council") under the London Borough of Southwark (Elephant and Castle No.1) Compulsory Purchase Order 2012. The Council took possession of the property under a general vesting declaration on 6 November 2013 which is agreed to be the valuation date.

2. There are two issues in dispute:

   (i) The open market value of No.49; and

   (ii) Disturbance.

3. The claimant says the open market value of No.49 is £300,000 and the Council says it is £235,000. The parties agree that the claimant is entitled to a home loss payment of 10% of the open market value.

4. The claimant seeks compensation for disturbance in respect of (a) the value of specified items that were left in No.49 at the valuation date (£2,725); and (b) the future costs of acquiring an alternative property (estimated at £7,470). The Council says the claimant agreed not to retain any items he had not removed from No.49 by the valuation date and that he did not want to incur the cost of their storage or disposal. Furthermore the Council says there is no evidence in support of the claimant's figure of £2,725 and that the claim for future losses is hypothetical.

5. The claimant appeared in person and called Mrs Penny Veness, BA, FRICS, a consultant to Edward Payne & Veness, as an expert valuation witness.

6. Mr Jon Abbott, Head of Regeneration North within the Council's Chief Executive's Department, appeared for the Council and called Mr Mark Warnett, MRICS, FAAV, an associate partner of Carter Jonas LLP, as an expert valuation witness.

7. The reference was heard under the Tribunal's simplified procedure.

Facts

8. No.49 was located on the Heygate Estate immediately to the east of the Elephant and Castle area of the London Borough of Southwark. It was bounded by New Kent Road to the north, Rodney Place to the east, Heygate Street to the south and Walworth Road to the west. The estate was completed in 1974 in the brutalist style of architecture and was constructed using the Jespersen 12M pre-cast concrete panel system. It contained 1,212 dwellings.

9. Four imposing tower blocks were located around the perimeter of the main part of the Heygate Estate. These blocks surrounded a central area containing 10 four-storey blocks of maisonettes. The maisonettes on the top two storeys were accessed by a gallery at second floor level. The lower maisonettes each had small front and rear gardens. A Council brochure based on the requirements of the original planning brief[1] for the Heygate Estate said that the tower blocks would contain two and three person flats while all the dwellings for larger families were grouped in the central maisonette blocks. A system of walkways were said to be the major pedestrian routes for the area so as to avoid the need for residents to walk on pavements or along roads.

10. There was a strong emphasis on the landscaping of the central area with the inclusion of a series of formal geometric spaces and the provision of a large number of trees. The said brochure states at paragraph 4.4.3:

> "Generous provision of tree planting is regarded as essential. In view of the need for immediate effect and rapid establishment, semi-mature trees … are proposed."

Photographs of the estate exhibited in evidence show that it was heavily wooded by mature trees at the valuation date.

11. No.49 was located in one of four maisonette blocks in the northern section of the middle part of the estate, to the south of, and at right angles to, the tower block facing New Kent Road known as Ashenden. It was a ground and first floor maisonette situated towards the south of the terrace comprising Nos.41-62. The block was faced with brick at ground floor level with concrete

[1] Exhibited as appendix 11 to the claimant's statement of case.

panels above. A gallery walkway ran along the length of the block at second floor level (above No.49) to give access to the upper level maisonettes.

12. The experts agree that the gross internal area of the reference property was 100m^2. The accommodation comprised a kitchen/breakfast room, store and living room at ground floor level and three double bedrooms, a bathroom with WC and wash basin and a separate WC on the first floor. There was double glazing to the ground floor and single glazed metal framed windows to the first floor. There was a front and rear garden. All mains services were available.

13. The estate was served by a district heating and hot water system. Following what the Council described as "a major burst" this system was permanently switched off on 23 April 2010. The Council said alternative forms of heating and hot water would be supplied as soon as possible. In the absence of such an alternative being provided the claimant notified the Council on 28 September 2010 that he would install his own gas central heating boiler. The Council did not respond and so the boiler was installed and certified safe on 15 October 2010.

14. The Council first resolved to review the Elephant and Castle and surrounding areas in June 1998. The "general proposal" included the plan that the Elephant and Castle would become one of the major generators of wealth creation within Southwark and "a model of high quality urban living". The Council said the major asset it had to offer was its significant land holding and that better use of this land was the key to the development of the project. The Council's Housing Committee identified the Heygate Estate as a being a suitable candidate for its "capital receipts initiatives". The Council acknowledged that "even raising such matters" could create difficulties for existing estates. The claimant submitted that the blighting effect of the scheme started at this time in 1998. I do not understand the Council to dispute this in terms although Mr Warnett focused upon the Council's decision to demolish and regenerate the Heygate Estate as set out in the 2004 Southborough Unitary Development Plan.

15. The Council stopped re-letting tenanted properties on the Heygate Estate on a permanent basis in the early part of 2001. It resolved to make a CPO on the Heygate Estate in July 2007, the area of which was revised in February 2010. Negotiations to acquire all the leasehold interests by agreement having failed the council made the CPO on 14 August 2012. The CPO was confirmed by the Secretary of State on 23 July 2013 following a public inquiry. A general vesting declaration was made on 25 September 2013 and possession of the reference property executed by the Sheriff of London on 6 November 2013.

16. The claimant held a leasehold interest in No.49. The lease was for a term of 125 years from 3 February 1986 at a fixed ground rent of £10 per annum and had some 97.5 years unexpired at the valuation date.

Issue 1: open market value

Valuation methodology

17. The experts agreed that the following assumptions applied at the valuation date:

(i) Cuddington and the surrounding residential blocks and public areas were in a fair and adequately maintained condition;

(ii) Cuddington and the surrounding blocks on the estate had normal rates of occupation and tenure; and

(iii) There was no prospect of the reference property being acquired by compulsory purchase for the scheme or any similar scheme of regeneration.

18. It was also agreed that comparables should be adjusted for time using the Land Registry House Price Index for Southwark (flats and maisonettes). Mrs Veness assumed in each case that the sale price was agreed two months before the completion date and she adjusted for time accordingly. Mr Warnett adopted the completion date of each transaction when making such adjustments.

19. Neither expert suggested the length of the unexpired term of the subject and comparable leases was a relevant factor in the valuation. None of the comparables were said to have an onerous ground rent or an abnormal service charge.

20. There was a dispute between the experts about whether No.49 was mortgageable because of its form of construction (the Jespersen 12M system). But since both experts relied mainly upon cash sales as comparables there was agreement that little turned on the issue.

21. In the absence of any evidence of recent leasehold sales on the Heygate Estate the experts adopted different approaches to the valuation of the reference property.

Mrs Veness's approach

22. Mrs Veness based her primary valuation upon the sale of comparable leasehold maisonettes on two nearby estates: the Gaywood Estate (five comparables) and the Rockingham Estate (two comparables). She made adjustments for time, size, quality, condition and the presence of a balcony or garden. Mrs Veness said the average value of the adjusted comparables (one of which she amended at the hearing) was approximately £303,000; ranging from £272,725 to £327,579. She concluded that the value of No.49 at the valuation date was £300,000. Mrs Veness also produced a historical analysis of pre-blight sales which she said showed similar values between the Heygate and Gaywood Estates at that time (circa 1998).

23. As a sense check Mrs Veness compared the average value of four properties sold on the Rockingham Estate (not specified to be flats or maisonettes) in 1997 and 1998 to the pre-blight value of No.49 which was purchased by the claimant in February 1998. Mrs. Veness said "the vast majority" of dwellings on the Rockingham Estate were of "traditional brick construction and design, characteristic of the 'inter-war' LCC estate aesthetic". She said the Tribunal had found

this type of estate to be more valuable than estates constructed from pre-cast concrete panel systems such as the Heygate Estate in *Sachikenye v London Borough of Greenwich* (2008) CON/105/2006 and CON/18/2007 (unreported). The average value of the sales on the Rockingham Estate was £775[2] per m^2. No.49 was purchased in 1998 for £55,500 which Mrs Veness (incorrectly) said was £550 per m^2. The value of No.49 was therefore some 30% less than the properties on the Rockingham Estate; a similar ratio to that found by the Tribunal when comparing different types of estate in *Sachikenye*.

24. Mrs Veness then compared the average time adjusted value of four (different) flats on the Rockingham Estate which were sold close to the valuation date (£5,611 per m^2) with her valuation of No.49 at the valuation date (£3,000 per m^2). She said that the average value of the Rockingham Estate sales "is approximately 45% higher than my…valuation of the subject property…" Mrs Veness then made two downward adjustments to the Rockingham figures to allow for their location on the top floor (10%) and their good condition (5%) compared with No.49. She concluded "I arrive more or less back at my pre-blight differential of 30%".

25. She also had regard to the sales of two three-bedroom flats at the south east corner of the Rockingham Estate shortly before the valuation date. These were said to be of a different construction type and style to the remainder of the inter-war blocks on that estate, being constructed of brick skin over a concrete frame with a flat felt roof. The sales were only adjusted for time and gave widely different values (£4,075 per m^2 and £5,283 per m^2) despite being sold only a week apart. Mrs Veness said the difference was due to one of the comparables being over sailed by a pedestrian footbridge that directly overlooked the property.

26. Mrs Veness referred to a number of settlements with the Council on the Heygate Estate with which she was personally involved. The average time adjusted value of six mid-terrace ground/first floor maisonette comparables was approximately £256,000. The average time adjusted value of 12 slightly larger end of terrace ground/first floor maisonette comparables was also £256,000. Mrs Veness did not attribute "too much weight on settlement evidence" because of the Delaforce effect, but she said these settlements illustrated that the Council's valuation was too low.

27. Finally, Mrs Veness referred to an agreement she said had been reached with the Council in December 2011 for the acquisition of No.49 "including some disturbance items" for £230,000. Indexing that figure to the valuation date gave a value of £275,540.

28. Mrs Veness rejected evidence of sales on the Aylesbury Estate as being unreliable because of blight. She said it was a mile away from the Elephant and Castle and was significantly larger: 2,759 dwellings on a 60 acre site, about four times the area of the Heygate Estate.

Mr Warnett's approach

[2] Mrs Veness did not adjust the sale prices for time to the date of sale of No.49.

29. Mr Warnett considered cash sales of three-bedroom ex-local authority flats and maisonettes in the vicinity of No.49. He chose four such comparables which he said were in "more conventional, and in my opinion more valuable, residential environments" than No.49. It was therefore necessary to adjust the values of the comparables for:

(i) Standard construction; and

(ii) Their location off the Heygate Estate.

30. In making these adjustments Mr Warnett had regard to evidence from the Aylesbury Estate which he said shared many of the characteristics of the Heygate Estate, namely:

(i) Predominately constructed from concrete systems in the brutalist architectural style;

(ii) Less attractive than surrounding residential environments;

(iii) A reputation for social problems and crime (whether merited or not); and

(iv) Physically disconnected from the wider urban environment due to visual uniformity and physical barriers created by the long concrete slab tower blocks.

31. The evidence from the Aylesbury Estate which Mr Warnett used "to inform adjustments for construction and 'off-estate' location" included the sale in May 2015 of 12 Soane House, a one-bedroom flat on the third floor of a conventionally constructed, brick clad high rise block on the "very edge" of the Aylesbury Estate. This evidence was then "compared to one bed flats in Jespersen 12M high rise blocks to the middle of the estate (after other adjustments)." But Mr Warnett gave no details of any sales of one-bedroom flats on the Aylesbury Estate other than 12 Soane House. The only other evidence of the sale of a one-bedroom flat was that of 22 Broadmayne on the third floor of a conventionally constructed brick built tower block some 200m north of Soane House which Mr Warnett used to illustrate the blighting effect (10%) of a CPO on the Aylesbury Estate. Mr Warnett adduced no comparative evidence to support his adjustments for standard construction and location off the Heygate Estate.

32. The four comparables relied upon by Mr Warnett comprised three-bedroom flats and maisonettes on the Rockingham Estate (three comparables) and the Aylesbury Estate (one comparable). He adjusted the comparables for time, size, whether the unit was in a low rise or a high rise block, view, outside space (garden or balcony), glazing (single or double), condition, location and construction type. Mr Warnett produced a revised analysis of his comparables on the day of the hearing to reflect new information provided by the claimant.

33. The average adjusted value of the four comparables was approximately £235,000. Mr Warnett adopted this figure as being the open market value of No.49 at the valuation date.

Discussion

34. The experts used one comparable in common: 48 Perronet House, a three bedroom maisonette on the sixth and seventh floors of a high rise block on the Gaywood Estate, which was sold for £280,000 in May 2013. One would expect two independent experts to adjust this comparable in approximately the same way. In fact Mrs Veness adjusted the sale price to give a comparable value for No.49 of £303,376 while Mr Warnett derived an equivalent value of £233,339, a difference of some £70,000.

35. £20,000 of this amount is due to the experts' different approaches to the indexation of values. Mr Warnett adjusts from the completion date of the comparable sale while Mrs Veness takes an assumed date for the exchange of contracts two months before the date of completion. In a rising market, which both experts agree this was, Mrs Veness's approach will always give a higher value when adjusted for time. In my opinion Mr Warnett's approach is to be preferred since it relies upon the objective and agreed evidence of the completion date. There was no evidence of the dates when contracts were actually exchanged and Mrs Veness's adoption of a date two months prior to completion in each case was speculative.

36. Both experts made adjustments to 48 Perronet for floor level and type of block (high rise or low rise), outside space and condition. Mrs Veness used percentage adjustments while Mr Warnett used spot figures (except when considering location where he used a percentage adjustment). I prefer the use of percentage adjustments as being more consistent when applied across the range of comparables.

37. Adjusting for the view Mrs Veness said that 48 Perronet "benefited from some views" although these would have been "somewhat limited". The particulars of sale said that the property boasted "panoramic viewing over [the] London skyline". The design of the maisonette meant the lower floor faced one direction and the upper floor faced the opposite direction. Mrs Veness said the time adjusted value of 48 Perronet should be reduced by 10% (£29,917) to reflect the benefit of its views compared to the reference property which is on the ground and first floor. Mr Warnett allowed £10,000 (3.3%) for the benefit of the views from 48 Perronet. He said the value of 48 Perronet should be increased by £5,000 (1.7%) because dwellings in low rise blocks (such as No.49) were more valuable than those in high rise blocks (such as 48 Perronet). He referred to evidence given to the Heygate Estate CPO inquiry where it was said that the maisonettes were of a less problematic design and were more popular with residents than high rise perimeter blocks. Mr Warnett tempered his adjustment for this factor by noting that ground floor maisonettes such as No.49 "tend to be less valuable" due to privacy and security issues.

38. I agree with Mr Warnett that the advantage of the reference property being in a low rise block should be taken into account and in my opinion an upward adjustment of 2.5% (£7,500) is appropriate for this factor. I would also make a reduction of 5% (£15,000) for the benefit of the views from 48 Perronet.

39. Mrs Veness considers that the value effect (5%) of a communal balcony at 48 Perronet is off-set by the gardens at No.49 to give a value neutral adjustment for outside space. Mr Warnett adds £10,000 (3.3%) to the value of 48 Perronet to reflect these differences. In my opinion the benefit of an individual garden at the reference property is of greater value than the availability of

a small shared balcony at the end of each floor of Perronet House. I would increase the value of 48 Perronet by 2.5% (£7,500) to reflect this factor.

40. The final adjustment which both experts make to the value of 48 Perronet is for condition. There is no agreement about the condition of No.49 which Mrs Veness describes as "average plus" and Mr Warnett says is "fair and habitable". Mrs Veness says that 48 Perronet was in poor condition whereas Mr Warnett describes it as being fair/good. I would describe the condition of No.49 as average. The information about the condition of 48 Perronet comprised brief particulars and a few photographs. At the hearing Mr Glasspool produced an email from Mr Andrew Beauchamp who I understand was the previous owner of 48 Perronet and who said of its condition at the date of sale:

> "It had not been touched since it was built and therefore needed [a] new kitchen and bathroom, complete re-wiring and decoration, hence the cheap purchase price."

I do not consider the evidence supports Mr Warnett's description of 48 Perronet as being in fair/good condition. Doing the best I can with the limited evidence available I think that No.49 was in marginally better condition and I adjust the value of 48 Perronet upwards by 2.5% (£7,500) to reflect this.

41. The experts disagreed about whether 48 Perronet was double-glazed (Mr Warnett) or single-glazed (Mrs Veness). The email from Mr Beauchamp referred to above stated that, like the reference property, 48 Perronet was partially double-glazed. I therefore make no adjustment for this factor.

42. No adjustment is required for size since the two properties are similar in area.

43. Mr Warnett makes a 20% downward adjustment to the value of 48 Perronet to reflect its superior "off-estate" location. It was not constructed from the unpopular Jespersen 12M pre-cast concrete system and was in a popular block of architectural interest with a refurbished exterior. Mr Warnett said the Heygate Estate suffered from a number of disadvantages (see paragraph 30 above) which justified a discount from the value of the better located comparables. I accept there is a distinction between Perronet House and the Heygate Estate but I think this has been overstated by Mr Warnett. There was evidence to show that Perronet House also suffered from crime and anti-social activities and I do not consider its design and construction to be materially superior to that of the blocks on the Heygate Estate. I do agree, however, that the Heygate Estate was designed to be "inward-looking" and isolated from the broader community by monolithic perimeter tower blocks. In my opinion a discount of 10% (£30,000) is appropriate to reflect these factors.

44. In summary I would make the following adjustments to the sale price of 48 Perronet:

Sale price:	£280,000
Adjusted for time:	£ 19,174
High rise/low rise:	£ 7,500

View:	(£15,000)	
Garden:	£ 7,500	
Condition:	£ 7,500	
Location:	(£30,000)	
	£276,674,	say £277,000

45. Mrs Veness's remaining six comparables are all maisonettes located near to the reference property. Four of the sales post-date the valuation date, in one case by 12 months. All of them are considerably smaller than the reference property. One of Mrs Veness's comparables, 32 Princes Street, was a one-bedroom flat that was only 42m^2 in area. Mrs Veness made an upward adjustment in value of 35% to reflect this. In my opinion if an adjustment of over a third is required the property cannot reasonably be considered comparable and I place no weight on this sale.

46. Mrs Veness's remaining comparables range from 65-85m^2 in area and only one of them had three bedrooms. Neither expert suggested adjusting for size by reference to a price per square metre. I accept that it is not necessarily the case that the relative value of two dwellings will be directly proportional to their area but Mrs Veness only allows a 10% increase in value. Although I think this is a reasonable adjustment in respect of the largest of her remaining comparables (46 Perronet) I do not think it is sufficient where No.49 is between a third and a half as big again as the comparables. In my opinion an allowance of 20% needs to be made to reflect the substantially greater size of No.49 compared with the majority of Mrs Veness's comparables.

47. My analysis of the value of No.49 based on Mrs Veness's remaining five comparables is set out in Appendix 1 and summarised below:

(i) 46 Perronet (Gaywood Estate):	£263,000
(ii) 28 Prospect House (Gaywood Estate):	£316,000
(iii) 16 Prospect House (Gaywood Estate):	£269,000
(iv) 7 Newall House (Rockingham Estate):	£326,000
(v) 20 Albert Barnes House (Rockingham Estate):	£333,000

48. I gain little assistance from Mrs Veness's sense-check valuations. Part of her analysis (see paragraphs 23 to 24 above) is inaccurate. £5,611 per m^2 is not 45% higher than £3,000 per m^2; it is 87% higher. The pre-blight value of No.49 is said to be 30% *less* than the pre-blight average of the Rockingham Estate comparables but in her analysis of transactions at the valuation date Mrs Veness appears to be saying that the pre-blight differential is maintained if the Rockingham Estate values are 30% *more* than the value of No.49. If the value of No.49 is 30% less than the average value of the Rockingham Estate comparables then for the differential between the estates to be

maintained the value of No.49 at the valuation date (£3,000 per m^2) should be 70% that of the Rockingham Estate comparables, i.e. £4,286 per m^2. In fact it is 63% of Mrs Veness's adjusted value of £4,769[3] per m^2.

49. Mrs Veness based her sense check on what she described as the Tribunal's approach in *Sachikenye*. That approach was a last resort and was founded on a comparison of a single comparable on the Ferrier Estate in the London Borough of Greenwich with a number of off-estate comparables. I expressed reservations about the approach in *Joshua v London Borough of Southwark* [2015] RVR 104 at paragraph 53 and again in *John v London Borough of Southwark* [2014] UKUT 0538 (LC) at paragraph 65. I do not find it helpful here, especially since in *Sachikenye* the Tribunal does not appear to have adjusted for blight when comparing the (blighted) on-estate comparable with its off-estate counterparts. Mr Glasspool suggested during cross-examination that Mr Warnett had adopted the *Sachikenye* method in his valuation, but I do not understand this to be the case in practice even if, which he denied, Mr Warnett had intended to adopt it (see paragraph 31 above).

50. I do not find the two comparables identified by Mrs Veness on the Rockingham Estate (see paragraph 25 above) to be helpful in the absence of a full comparison with No.49.

51. Mr Warnett relies upon four comparables which have the benefit of being sales of three bedroom properties (although not all were maisonettes) that took place before the valuation date. One of these (26 Foxcote) was on the blighted Aylesbury Estate which Mr Warnett considers comparable to the Heygate Estate. I agree with Mrs Veness that the two estates can be distinguished in terms of size, location and character. Mr Warnett appears to accept this in making an adjustment of 10% for "location" in his analysis of 26 Foxcote. The use of this comparable requires an additional adjustment for blight. I do not find the comparable to be helpful and I give it no weight.

52. Of Mr Warnett's remaining three comparables, 48 Perronet has been discussed above. The other two are 11 Albert Barnes House and 3 Cartwright House the analysis of which he amended shortly before the hearing following the receipt of further information. My analysis of these two comparables is given in Appendix 1 and is based upon the principles and adjustments that I have explained above. Mr Warnett makes a separate adjustment for double-glazing whereas I include that factor within the adjustment for condition. In summary the value of No.49 based on these comparables is:

(i) 11 Albert Barnes House: £201,000

(ii) 3 Cartwright House: £291,000

53. I place most weight upon 48 Perronet of the eight comparables to which I have had regard because both experts consider it to be a good comparable. I place least weight upon the two flats at Albert Barnes House which have outlying values (high and low). From my analysis I conclude that the open market value of No.49 at the valuation date was £286,000.

[3] £5,611 per m^2 less 15% for the better view and better condition of the Rockingham Estate comparables.

Issue 2: Disturbance

54. Mr Glasspool claimed the value of the items which he left at No.49 on 6 November 2013 when the Council took possession. He provided a list with his estimate of each item's value in use at the valuation date. This totalled £2,725.

55. Mr Glasspool claimed a further £7,470 which he estimated to be the costs of purchasing an alternative property. He had not yet made such a purchase because he thought the Council's valuation of his property was too low and, even with an advanced payment that included a partial (90%) home loss payment, he could not afford to acquire a suitable alternative flat or maisonette. Since No.49 was acquired Mr Glasspool said he had been staying with family and friends. He still intended to purchase an alternative property. He had written to the Council last year enquiring about the possibility of acquiring a substitute property under a shared equity scheme but was told none was available.

56. The Council said that it had made an inventory of the claimant's possessions on the day it took entry onto No.49. The next day a Council officer, Mr Matthew Rees, met Mr Glasspool on site to discuss arrangements for the removal of the possessions from the property. The same day Mr Rees made a contemporaneous note of the meeting and recorded that Mr Glasspool had identified the items that he "wanted collected" and that he "made it clear that any remaining items would no longer be required by him and wished confirmation that he would not be liable for any future disposal costs". The Council's contractor packed the items requested by Mr Glasspool and transported these to the main gates for collection. The Council accepted responsibility for the loss of Mr Glasspool's iPhone and paid him £500 compensation. The items left in the reference property were subsequently disposed of by the Council. They were not sold.

57. The Council said it could not agree to pay for the alleged losses in the absence of any evidence to support Mr Glasspool's claim. That part of the claim relating to future acquisition costs of an alternative property was hypothetical. The Council said it was "unable to comment on their reasonableness" and repeated that evidence of actual loss was required before payment of compensation.

58. Mr Glasspool emphasised that the context of his agreement with the Council for the disposal of the remaining chattels was its insistence that it would deduct any storage costs from the compensation payable. In the event no such storage costs were charged to Mr Glasspool.

Discussion

59. It appears that Mr Glasspool agreed to the Council disposing of those of his possessions that he was unable or unwilling to take away from No.49. He did so because he did not want to pay for their storage. It is not clear that he accepted that the Council would dispose of them for no value which is what seems to have happened.

60. A claimant is under a duty to take reasonable steps to mitigate his loss and he cannot recover a loss which was avoidable. Mr Glasspool knew when possession was due to be taken. The loss of some of his possessions (or at least the loss of their value) was, in my opinion, avoidable had Mr Glasspool taken steps to dispose of those items that he knew he would be unable to take with him upon his inevitable dispossession from No.49. A claimant cannot mitigate his losses by doing nothing.

61. Nor is there any evidence to support Mr Glasspool's estimate of the value of his lost possessions; his estimates are arbitrary. The second hand value of items such as a washing machine or a refrigerator can readily be estimated by modest research online but it is not for the Tribunal to undertake that task. In these circumstances I disallow this head of Mr Glasspool's claim.

62. The second part of Mr Glasspool's claim for disturbance relates to costs that he says he will incur as and when he acquires an alternative dwelling. He re-iterated his intention to purchase another property at the hearing, although I am mindful that it is approaching four years since the valuation date and there is no sign yet of such an acquisition being made – ostensibly because Mr Glasspool says he cannot afford to buy a similar dwelling with the compensation currently offered by the Council (90% of which was paid to him on 7 November 2013). But house prices have continued to rise in the intervening period and since the valuation date the rate of statutory interest has been zero. Other things being equal Mr Glasspool seems to be moving further away from being able to acquire a suitable alternative property. As at July 2017 the relevant Land Registry Index was 36% higher than at the valuation date. So the reference property, which I have determined was worth £286,000 at the valuation date, would now be worth some £389,000.

63. In my opinion the right to make a claim cannot properly be limited by an acquiring authority specifying a date by which an alternative dwelling must be acquired if a claim is to be admitted. But on the other hand an acquiring authority needs reasonable certainty about the timescale for paying compensation following the taking of possession and cannot be expected to provide for contingent liabilities indefinitely. Furthermore until the loss is actually incurred the claimant is not out of pocket.

64. However, the date on which the claimant's compensation is to be assessed is the valuation date. Losses which have not yet been incurred on that date, but which, on a balance of probability, are liable to be incurred as a result of the acquisition, ought in principle to be the subject of compensation.

65. The length of time since the valuation date may be some indication, where nothing has happened, that nothing is intended to happen but Mr Glasspool denies this and says he genuinely intends to acquire alternative premises when (or, more likely, if) this becomes possible. I found Mr Glasspool to be a credible and honest witness whose evidence, despite the reference being heard under the simplified procedure, was given under oath. I do not doubt his desire or intention to acquire an alternative dwelling. It may be that impecuniosity will prevent him from doing so, or at least from acquiring a similar property in a similar location, but it was foreseeable at the valuation date that the costs of purchasing and moving to another dwelling would probably be

incurred and Mr Glasspool's calculation of what those costs would be (which appears to be based upon a purchase price of £300,000 given the amount of stamp duty claimed) are reasonable.

66. In *Roberts v Greater London Council* (1974) 14 RVR 104 the Tribunal, J Stuart Daniel QC, considered a similar case where the reference was heard before the claimant had acquired alternative accommodation. The Tribunal noted at 106:

> "[The claimant] was in this difficulty, that not having yet agreed a sum for compensation he had not the funds with which to buy another house."

The claimant sought compensation for removal costs and *Crawley* costs[4] (legal and surveyors' costs of finding and purchasing an alternative house) before these had been incurred. The Tribunal dealt with the matter at 108(5):

> "I said during the hearing that there might be an advantage in achieving finality by fixing a spot figure for [removal costs] at the present time. However, as the Council accept a liability for the "*Crawley*" costs and since these cannot be quantified at this date I will make this an interim decision and leave both these matters (removal costs and "*Crawley"* costs) to come back to the Lands Tribunal if necessary."

67. I do not understand the Council to object in principle to the payment of the costs associated with the purchase of an alternative property. Their concern is about the reasonableness of the claim where the costs are hypothetical and not yet incurred. In *Lancaster City Council v Thomas Newall Limited* [2013] EWCA Civ 802 the Court of Appeal considered a claim for "management time" as an item of disturbance. Rimer LJ said at [32]:

> "I fully recognise the deference that an appellate court should pay to decisions of an expert tribunal in relation to decisions falling within its area of particular expertise. The 'management time' issue was not, however, one falling within the specialist expertise of this tribunal. It was, in substance, a straightforward common law claim for compensation that had to be made good on the evidence; and if there was no evidence sufficient to make it good, the tribunal's duty was to reject it. The tribunal's error was to make an award of compensation when there was no evidence proving loss. That was unquestionably an error of law."

68. Claims for *Crawley* costs feature routinely in references to the Tribunal and their assessment falls within its expertise. I have already noted that the amount claimed by Mr Glasspool under this head would be reasonable for the acquisition of a domestic property worth £300,000 (at least assuming current stamp duty rates) a sum which would be available to Mr Glasspool given the amount of my award and the addition of a home loss payment.

69. I do not consider it would be reasonable, given it is already some four years after the valuation date, to issue an interim decision and leave the issue open *sine die* as the Tribunal did in *Roberts*. In Roberts the acquiring authority accepted liability in principle and the Tribunal preferred certainty over finality. I take the opposite view. There should be finality in this decision

[4] *Harvey v Crawley Development Corporation* [1957] 1 QB 485

and loss should be assessed at the valuation date, even if that involves making some assumptions about the future which may or may not prove to be correct. The assessment of what is likely to have happened from the valuation date can be informed by what has in fact happened by the date the assessment is made. But the fact that there remains some uncertainty is not a reason for rejecting a claim on the balance of probability. Mr Glasspool says that he has been unable to buy an alternative property given the Council's valuation of No.49 and he has succeeded before this tribunal in obtaining an increase in compensation for the value of his leasehold interest. In my opinion the evidence of his intention to acquire another property and the reasonableness of the amount claimed justifies the award of £7,470 under this head of claim.

Determination

70. I determine the compensation as follows:

(i) Open market value of the reference property:	£286,000
(ii) Home loss payment:	£ 28,600
(iii) Disturbance:	£ 7,470
Total compensation:	£322,070

71. The hearing was heard under the Tribunal's simplified procedure which is not a procedure under which costs are normally awarded unless either party has behaved unreasonably or where circumstances are in some other respect exceptional. I do not consider that either party has behaved unreasonably or that there are any exceptional circumstances that would justify the award of costs. But the discretion of the Tribunal to award costs is qualified by section 4 of the Land Compensation Act 1961 (see Practice Direction 12.3(2) of the Tribunal's Practice Directions 2010). I am aware from the evidence that the Council may have made an offer or offers to the claimant and under these circumstances section 4 is relevant.

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

Dated: 12 October 2017

A J Trott FRICS

Member Upper Tribunal (Lands Chamber)

ADDENDUM ON COSTS

73. I have now received submissions on costs from both parties.

74. The Council made an unconditional offer of £275,000 in full and final settlement of Mr Glasspool's claim under section 4 of the Land Compensation Act 1961 on 5 September 2017. That offer was exceeded by my award.

75. Mr Glasspool seeks costs of £9,360, being the cost of his expert Mrs Veness (including VAT). The Council accepts that this amount is payable. I therefore determine that the Council shall pay Mr Glasspool's costs in the sum of £7,800 plus VAT at 20%.

Dated 6 November 2017

A J Trott FRICS
Member Upper Tribunal (Lands Chamber)