LCA/167/2005

LANDS TRIBUNAL ACT 1949

COMPENSATION – planning permission – refusal of planning permission formerly granted by development order – inability to construct a stock proof fence – whether depreciation in the value of the claimant's freehold interest – nil compensation awarded – Town and Country Planning Act 1990 ss107 and 108 – Town and Country Planning (General Permitted Development) Order 1995

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**ELIZABETH LANCASTER-THOMAS**	**Claimant**
	and	
	TEIGNBRIDGE DISTRICT COUNCIL	**Compensating Authority**

Re: Barn Cottage,
Venn Farm Lane,
Teignmouth, Devon,
TQ14 9PB

Before: A J Trott FRICS

Sitting at Plymouth Combined Court, The Law Courts,
10 Armada Way, Plymouth, Devon PL1 2ER
on 8 June 2007

Dr Vaughan Lancaster-Thomas, with the permission of the Tribunal, for the claimant
Mr Duncan Moors, solicitor, Teignbridge District Council, for the compensating authority

No cases are referred to in this decision

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DECISION

Introduction

1. This is a reference for the determination of the amount of compensation which the claimant, Elizabeth Lancaster-Thomas, is entitled to be paid under sections 107 and 108 of the Town and Country Planning Act 1990 by Teignmouth District Council. The claim arises in respect of land at Barn Cottage, Venn Farm Lane, Teignmouth, Devon following the making by the compensating authority of a direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (the order) and the subsequent refusal by them of planning permission for the erection of fences and a gate on part of the claimant's land.

2. Dr Vaughan Lancaster-Thomas appeared on behalf of the claimant, with the leave of the Tribunal, and called as an expert witness Mr Martin Henry Woodhead FRICS, senior partner of Drew Pearce, Chartered Surveyors of Exeter. Mr Duncan Moors, a solicitor with Teignbridge District Council, appeared on behalf of the compensating authority. He called as an expert witness Mr Edward David Edwards BSc, MRICS of Husseys, Chartered Surveyors of Exeter.

3. I made an accompanied inspection of the reference land on 7 June 2007.

Facts

4. The parties prepared a statement of agreed facts from which, together with the evidence and my site inspection, I find the following facts.

5. Barn Cottage is located in Venn Farm Lane approximately one mile to the north of Teignmouth. It is an end of terrace house, recently extended, that was constructed in the late 1970s. It comprises three bedrooms (one of which is at ground floor level), a kitchen/living room and a further reception room. The upper bedrooms have en-suite bathroom and shower facilities and there is a separate ground floor bathroom. There is an unimplemented planning permission to develop a fourth bedroom. The property fronts directly onto Venn Farm Lane and has a grasscrete driveway to the side. There is a small rear garden beyond which lies an area of land, referred to in this decision as the plot, that forms part of a larger field extending to approximately $2^{1}/_{4}$ acres. The majority of the field is unkempt and overgrown with nettles and weeds. At the time of my site inspection the plot was grassed and being used to keep chickens. The property is located in an elevated position and enjoys panoramic views to the south towards the Teign estuary, the Ness headland and the sea beyond.

6. The house, garden, plot and the remainder of the field are held by the claimant under a single title and were purchased by her in September 2003.

7. On 14 March 2005 the compensating authority made a direction under Article 4(1) of the order which was approved by the Secretary of State on 11 August 2005. The direction recited that the compensating authority was satisfied that it was expedient that development permitted under Class A of Part 2 of Schedule 2 of the order should not be carried out unless permission was granted for it on an application. It applied to the field, including the plot, but excluded the house and the garden.

8. On 15 April 2005 the claimant submitted a planning application for the erection of fences and a gate at Barn Cottage. The application included the house, garden, plot and the remaining field (namely the totality of the claimant's title) within the area shown edged in red on the site plan that accompanied the application. The fencing was to be located along the eastern and southern boundaries of the plot (the respective lengths of which were shown as 12 metres and 30 metres on the plan) with the remaining boundaries of the same being formed from the rear gardens of the houses in Venn Farm Lane. The gate was to be located in the southern boundary of the plot. Both the fence and the gate were to be stock proof.

9. The compensating authority refused planning permission on 13 June 2005 (the valuation date) on the grounds that (i) the development would cause a significant and harmful intrusion on the distinctive landscape character and quality of the area, to the detriment of visual and residential amenity; (ii) it would be tantamount to creating a garden extension to Barn Cottage which would encroach into designated countryside; and (iii) it would set an undesirable precedent. The claimant served a notice of claim for compensation on the compensating authority on 17 June 2005.

10. On 20 July 2006 this Tribunal (His Honour Michael Rich QC) determined as a preliminary issue in this case that, prior to the Article 4 direction, the plot could have been used as an allotment on agricultural land adjoining the curtilage of Barn Cottage, the boundary of which allotment could be enclosed with fences and a gate without the need for planning permission.

Statutory provisions

11. Section 108 of the 1990 Act provides that where planning permission granted by a development order is withdrawn and an application for planning permission for development formerly permitted by that order is refused, section 107 shall apply as if planning permission granted by the development order had been granted by the local planning authority and had been revoked or modified by an order under section 97. Section 107 provides that where planning permission is so revoked or modified the local planning authority shall pay compensation to a person interested in the land in respect of expenditure incurred in carrying out work which is rendered abortive by the revocation or modification or for loss or damage otherwise sustained which is directly attributable to that revocation or modification.

12. In this reference it is the specific loss or damage that is directly attributable to the refusal of planning permission on 13 June 2005, and not any general effect of the withdrawal of permitted development rights by the Article 4 direction, which is compensatable. No claim has been made in respect of any abortive expenditure.

The case for the claimant

13. Mr Woodhead argued that the claimant had suffered financial loss or damage because her inability to construct a stock proof fence following the refusal of planning permission had had a measurable impact upon the market value of the house, garden and plot. He believed that a purchaser would reduce his offer by £10,000 but that a negotiated settlement of a £7,500 reduction in price would result. He relied upon the valuations that the claimant had obtained from Lin Wilton of Dart and Partners on 3 July 2006 and did not produce any comparables of his own.

14. In estimating the compensation payable Mr Woodhead considered the possibility, as suggested by the compensating authority, of enclosing the plot by hedging rather than by a stock proof fence. Such a hedge would not be stock proof for perhaps 10 to 15 years. Meanwhile the growing hedge would need to be protected which was difficult to achieve in view of the Article 4 direction. Mr Woodhead considered that a hedge could not sensibly be used as a boundary treatment and that without a stock proof fence the plot could only be used, in effect, as part of the remaining field. He saw no benefit in that to a prospective purchaser of the plot who would therefore not be prepared to pay as much for it.

15. This conclusion was strengthened by two further factors. Firstly, prospective purchasers would be under the impression that they could not deal with the property as they would like and might be concerned that other, more significant, restrictions would be placed on the property by the local planning authority in the future. Secondly, the absence of a gate between the plot and the remainder of the field meant that a prospective purchaser would have to rely for vehicular and pedestrian access to the field upon the existing boundary gate onto Venn Farm Lane some 90 metres east of Barn Cottage.

16. Mr Woodhead conceded that the problems caused by the refusal of planning permission following the Article 4 direction were unlikely to be deal breakers, although he thought on reflection that they were significant restrictions rather than just inconveniences and that they would be reflected in a reduced offer price. He agreed that the assessment of the impact on price of a purchaser's inability to construct a stock proof fence was subjective although he had said in his report that the restrictions arising from the direction would have a measurable impact on market value. He could not produce direct comparables of the effect of such an Article 4 direction. Instead he had relied upon his skill and judgment as a valuer with many years experience of similar rural properties. He had formed a view based upon an appreciation of all of the relevant factors and had reached a conclusion on how the market would react. He considered this to be more helpful in this instance than the use of the comparables put forward by the compensating authority which he noted did not relate to an Article 4 direction. He had reviewed these comparables but did not think that they provided the necessary assistance to

conclude, as Mr Edwards had done, that the Article 4 direction and the subsequent refusal of planning permission had no effect upon the value of the house, garden and plot.

17. Mr Woodhead accepted that he had not stated in his report that his valuation had taken account of market demand and conditions. Nevertheless he had considered these factors and stated that there was a strong market with a high demand for additional areas of land such as the plot that helped create a good size curtilage. He concluded that a strong market meant that the restrictions created by the Article 4 direction had a greater impact than might otherwise have been the case. Under cross-examination on this point Mr Woodhead conceded that in a strong market, where there were more potential purchasers, there was likely to be a smaller discount due to the restriction of the Article 4 direction. A vendor would be able to decline a heavily discounted offer and would wait for another purchaser to make a better bid.

18. Dr Lancaster-Thomas submitted that many factors contributed to a valuation, the precise inter-relationship between which was complex and not capable of formulation. A valuer in the present case could not place weight objectively on any particular factor. Mr Woodhead was a surveyor of long experience and the senior partner of an eminent firm. He was unlikely to have ignored any comparables that may have helped him in the current valuation exercise. On the other hand Mr Edwards for the compensating authority had relied upon comparables as if this was the done thing, regardless of the fact that he had steadily admitted during cross-examination that virtually all of the pertinent objections to the claimant's case that were based upon these comparables were unfounded. Mr Edwards' comparables were misleading and unhelpful and Mr Woodhead was wise not to rely upon them.

19. The value of the plot depended upon its enclosure by a stock proof fence and the effect on that value of the restrictions arising from the Article 4 direction was a proportionate one that did not vary with the strength and size of the market. If, for example, the Article 4 direction had led to a 5% reduction in price the strength of the market would not alter that proportion, it would only affect the amount to which it was applied.

20. The compensating authority had said that the claimant should have planted a hedge. This would have been a waste of time. Without protection, which was not possible given the Article 4 direction, such a hedge would not have grown. It would have been eaten and trampled. The compensating authority had continuously attempted to introduce enclosure by a hedge as an issue. Dr Lancaster-Thomas illustrated this by reference to the statement of agreed facts which described the determining issue in this case without mention of a hedge but only by reference to the removal of the right to construct a stock proof fence. The compensating authority's skeleton argument on the other hand qualified the removal of this right by an additional reference to enclosing the plot with a hedge. Mr Edwards' comparables did not assist the compensating authority in its arguments about hedging because all they demonstrated was that there had been no discount in value due to an obligation to fence the land concerned. The claimant was not disputing this. Its argument was that an inability to construct a stock proof fence would depreciate the value of the house, garden and plot. Mr Edwards' comparables were not to this point and did not show that a purchaser who could only stock proof a property by growing a hedge would not discount the price he was prepared to pay. Dr Lancaster-

Thomas submitted that Mr Edwards' evidence was fundamentally flawed in this respect because he had wrongly considered the effect on value of enclosing the plot by a fence rather than a hedge. This confusion was compounded by the compensating authority in its skeleton argument where it stated:

> "He [Mr Edwards] has provided five comparable transactions which establish that the restriction against fencing has had no effect on the value of these comparable pieces of land"

Dr Lancaster-Thomas described this as a nonsensical statement because the comparable evidence was not concerned with restrictions *against* fencing. Mr Edwards had not been able to justify the statement in cross-examination.

21. It was the compensating authority's case, as summarised in its skeleton argument, that Mr Woodhead and Dart and Partners, whose valuations he relied upon, were under the misapprehension that the plot could be used as a garden. Dr Lancaster-Thomas submitted that this was untrue. Dart and Partners had not referred in their valuations to the use of the plot as a garden, referring to it in their written report as "the rural plot directly to the rear of this property". The claimant accepted that the plot could not be used as a residential garden for other than on 28 days per year. However, it could be used at all times as a kitchen garden which he took to be synonymous with an allotment. Indeed it was currently being so used without objection from the compensating authority.

22. Any prospective purchaser would have regard to the planning history of the site when considering the future prospects for obtaining planning permission to construct a stock proof fence. Dr Lancaster-Thomas said that there had been six other unsuccessful planning applications for fences and gates and that this showed a consistent opposition to this type of development by the compensating authority.

23. The compensating authority had made a number of statements in its skeleton argument about the claimant's future intentions for the site including the opinion that "the claim for compensation clearly had no basis on the long term intention for either the use or disposal of this land". It had also said that the desired intention of the claimant was to build a house on the field. Dr Lancaster-Thomas refuted these views saying that they were not material evidence and that the allegations were groundless and an attempt to blacken the claimant's name. The claimant's declared intention was to sell the field. It, and Barn Cottage, were presently on the market and there was no reference to a prospective building plot in the sales particulars. The compensating authority's comments were immaterial, misleading, outdated and wrong.

24. The claimant accepted that she had the onus of proof to show loss or damage. But the compensating authority's case depended upon its assertion that a hedge was a viable alternative stock proof enclosure. The compensating authority had not produced any evidence in support of this assertion unlike Mr Woodhead who had argued persuasively that the plot could not be realistically protected by a hedge for another 10 to 15 years. The compensating authority had argued that the claimant had suffered no loss or damage but had not contested Mr Woodhead's

figures and had failed to show where he was wrong in his assumptions and valuation. The compensating authority's assertion of no loss should be given little weight.

25. Dr Lancaster-Thomas concluded that the claimant's valuation was to be preferred. However, he submitted that the compensation should be the full loss of £10,000 estimated by Mr Woodhead rather than the figure of £7,500 which Mr Woodhead said would be agreed in negotiation. The unfeasibility of growing a stock proof hedge within 10 to 15 years, a subject that had not been fully explored at the time Mr Woodhead submitted his expert report, justified the award of the higher figure.

The case for the compensating authority

26. Mr Edwards stated that he had been instructed to advise on the difference in value of the claimant's land on two bases. Firstly, on the assumption that the claimant could enclose the plot with a stock proof fence and gate and, secondly, on the assumption that she would only be able to enclose the plot with a hedge. He had been unable to find any direct comparables involving the refusal of planning permission following an Article 4 direction. However he had identified, and relied upon, five comparables involving the sale of land where there had been an obligation on the purchaser to erect boundary fences and, in one case, a hedge. The comparable sales (which had taken place between 2003 and July 2006) showed that there had been no discount in price due to the obligation to construct or change a boundary enclosure or due to a lack of direct access onto the land from the purchaser's adjoining property.

27. Mr Edwards was surprised that Mr Woodhead did not consider these comparables to be useful. Mr Edwards said that they were transactional evidence which he believed would be of assistance to the Tribunal. He explained that the market for smallholdings and similar plots of land had been very strong in the Teignmouth area for at least five years. There were many people who were in the market for such land parcels who were not interested in keeping livestock and who were described by Mr Edwards as being "non-agricultural". Their motives for acquiring such land ranged from the pleasure and status of owning it to its use for recreational purposes by their children in keeping with such a rural area. Mr Edwards was also surprised that Mr Woodhead had not referred to the strength of the market and the high demand for land such as the plot.

28. Under cross-examination Mr Edwards accepted that his assumption about the origin of the claimant's original claim of £24,000 had been based upon a misunderstanding of Dart and Partners' valuation dated 3 July 2006. However, he considered this document to be a market report rather than a formal valuation and in any event, unlike Mr Woodhead, he was not relying upon their figures. He believed that his five comparables demonstrated the existence in a strong market of premium prices that were unaffected by fencing obligations and the lack of direct access. He accepted that without effective stock proofing the plot would be just a corner of a larger field that was accessible to livestock and wild animals. However, he felt that a purchaser might be able to obtain planning permission to erect protective fencing while the hedge was growing. He thought that the local planning authority's view on the matter might be

different given a new owner who was not associated with the lengthy planning history of the reference land.

29. Mr Edwards acknowledged that the existence of the Article 4 direction might deter some people from bidding for the subject property but, given the strength of the market, he did not believe that this would affect its market value. In reaching this conclusion he had not used any objective valuation method. Instead he had considered the strength of the market and had exercised his judgment in the light of such comparable evidence as he was able to obtain. He acknowledged that these comparables involved special purchasers, namely adjoining landowners.

30. Mr Moors submitted that the onus of proof lay with the claimant to show that she had suffered loss or damage arising from the planning refusal following the Article 4 direction. She had failed to do so. Her witness, Mr Woodhead, had made a number of concessions in his evidence. He accepted that a hedge could demarcate the boundary and that it could be stock proof. He acknowledged that he had not referred in his report to any problems arising from the time it would take for a hedge to become an effective livestock barrier. He agreed that as at the valuation date the market was strong (at an all time high) and that there was a good demand for property of this type. Purchasers were in a relatively weak negotiating position. It was impossible to measure the impact of the restriction objectively and Mr Woodhead had not tried to use comparables, relying instead upon his view that it was likely that a purchaser would negotiate a reduction of £7,500. The provenance of this figure had not been satisfactorily explained or justified.

31. Mr Edwards on the other hand had provided details of five comparables. Although these were not directly comparable to the subject property they did involve the boundary treatments of similar land and took account of relevant market conditions. They were of assistance to the Tribunal. Mr Edwards had concluded from these comparables that there had been no loss or damage to the house, garden and plot as a result of the Article 4 direction and the subsequent refusal of planning permission. In reaching these conclusions Mr Edwards had shown that the market was not a sophisticated one but was, and continued to be, very strong. There was a shortage of this type of property and potential bidders were not necessarily adjoining owners. Not all purchasers would wish to use the plot to keep livestock. There were a variety of motives for wanting to buy such land not of all of which required stock proof hedges let alone fencing. Mr Edwards had heard nothing in Mr Woodhead's evidence that had made him change his mind. Mr Edwards had supplied evidence to assist the Tribunal and had met his obligations as an expert. Mr Woodhead's evidence did not carry the same weight. It did not refer to any comparables and gave no commentary on the state or strength of the market. Mr Edwards' evidence was to be preferred and this showed that no compensation was payable in this case.

Conclusions: evidence

32. Neither expert was able to find comparable evidence of a transaction where planning permission had been refused following an Article 4 direction. Mr Woodhead did not rely upon

any comparables but relied instead upon a valuation undertaken by Dart and Partners in July 2006 and upon his own judgment as an experienced valuer of rural property. I agree with Mr Edwards, however, that the letter from Dart and Partners was in fact a marketing report suggesting a range of asking prices rather than a valuation. The author refers to it as providing a "market appraisal" and nearly half of the letter sets out the terms and conditions of that firm "should you favour Dart and Partners with [selling] instructions". I am not satisfied from his evidence that Mr Woodhead had understood the basis of the three valuations provided by Dart and Partners. In his report he said that a further valuation was required being of the house, garden and plot separated from the remainder of the field by a hedge and with no direct access from the plot into the field. I pointed out to Mr Woodhead, and he accepted, that Dart and Partners had provided such a figure in their letter of 3 July 2006. Dr Lancaster-Thomas adroitly exposed discrepancies in Mr Edwards' understanding of Dart and Partners' letter, in particular the basis upon which the original claim of £24,000 had been made. However, unlike Mr Woodhead, Mr Edwards did not rely upon Dart and Partners' valuations. Mr Woodhead's uncertainty about the details of a third party's valuation with which he agreed and upon which he relied goes to the credibility of his evidence. I agree with Mr Moors that Mr Woodhead failed to explain satisfactorily his reasons for taking £10,000 as the reduction in the offer of a prospective purchaser due to the restriction arising from the Article 4 direction. It was not based on comparables or a percentage adjustment to any of the Dart and Partners valuations but instead appears to have been a spot figure based upon Mr Woodhead's experience.

33. Mr Edwards relied upon five comparables to show that an obligation to fence a field, or the lack of a direct access to it from adjoining property, did not lead to a discount in the price paid. He accepted that in the subject reference it was the inability to fence the plot that fell to be considered in terms of its effect upon value. Mr Edwards' comparables related to obligations to construct fencing as a result of which the land being purchased would retain its utility for its proposed use. In the subject reference the effect of the Article 4 direction and the subsequent planning refusal is to prevent the plot from being used for a separate allotment since it cannot be stock proofed. Nevertheless, Mr Edwards argued that the comparables were analogous in that they demonstrated the willingness of purchasers in a strong market to overlook fencing obligations (rather than restrictions) and not to discount the price that they were prepared to pay.

34. I accept the evidence of Mr Woodhead that it is not feasible to grow a stock proof hedge in under 10 to 15 years and that, in any event, such a hedge cannot be grown at all unless it is adequately protected during that time. Insofar as such protection requires a protective stock proof fence the Article 4 direction will necessitate a further planning application being made. Dr Lancaster-Thomas submitted that a prospective purchaser would have regard to the planning history of the site and that they would be deterred by the fact that the local planning authority has refused seven applications for stock proof fencing. Whilst I accept that this is a factor that a purchaser would consider I also give weight to Mr Edwards' argument that the planning history of this site is a reflection of the claimant's particular requirements and that a purchaser may consider the local planning authority would have a different attitude with a change of ownership. Indeed it is clear from the evidence that the parties in this case have not enjoyed an easy or comfortable relationship. Mr Woodhead expressed it more colourfully during the hearing when he said that there was "a right barney" going on between them. For its part the compensating authority consider the claim to be vexatious and point to the large

number of planning applications (now 20) that the claimant has made since 2003. In my opinion a prospective purchaser would conclude that the planning history of the subject site reflected, at least in part, a personal animus between the parties.

35. Two of Mr Edwards' comparables were concerned with the effect on value of not having direct access to fields from adjoining properties. He stated that a lack of such access had no effect upon the purchase price. Under cross-examination, however, he acknowledged that for the comparables he gave there was apparently nothing to prevent such direct access being taken. Part of the claimant's claim in this case relates to her inability to gain direct access from the plot to the remaining field if she is unable to build a gate but has to rely instead upon a continuous stock proof hedge boundary. Mr Woodhead had implicitly allowed for this factor in his assessment of compensation at £7,500.

Conclusions: compensation

36. The parties agreed that the land to which the claim for compensation relates was the house, the garden and the plot but not the remainder of the field. Despite this agreement Mr Edwards said in evidence that he had assumed that the field was to remain in the same ownership as the rest of the property. Mr Woodhead's report makes the same assumption. From my site inspection and from what Dr Lancaster-Thomas said at the hearing it is evident that the claimant is currently selling all of her property including the field. The field forms part of a single title, was included as part of the planning application the refusal of which led to this claim and is subject to the Article 4 direction.

37. I have already found that there is no viable short-term means of stock proofing the boundary of the plot other than by fencing. The use of the plot as a separate allotment would therefore be prone to disruption by any livestock that was in the field. However, there are no restrictions on the claimant stock proofing the boundaries of the field itself. Nor is there a presumption that all or any of the field would be used for keeping such livestock. It is not currently used for that purpose (other than a few chickens kept on the plot) and has not been so used for many years. Indeed at the time of my inspection the majority of the field remained unkempt and overgrown with weeds.

38. A prospective purchaser would have regard to the planning history of the site but would also, in my opinion, conclude that the claimant had been unusually persistent in the submission of planning applications since 2003 to the extent that the local planning authority considered her behaviour to be vexatious. I agree with Mr Edwards that a purchaser, unassociated with this troubled planning background, may be more sanguine about the prospect of obtaining planning permission for stock proof fencing in the future.

39. The burden of proof to establish compensatable loss or damage rests with the claimant. In seeking to discharge that burden Mr Woodhead has relied, exclusively it seems to me, upon his experience. He accepted a market appraisal (akin to an asking price) prepared a year after the valuation date by a firm of local estate agents. That valuation was not tested by oral

evidence subject to cross-examination and Mr Woodhead was unsure about the basis upon which it had been carried out. It is hearsay evidence to which I attribute little weight. Mr Woodhead did not rely upon any comparables, and rejected those relied upon by Mr Edwards as being of no assistance. In short, his evidence consisted of an assertion that a prospective purchaser would be able to reduce the purchase price by negotiation by £7,500. In my opinion such an assertion does not satisfy the burden of proof in this instance.

40. Mr Edwards based his opinion on five comparables. Dr Lancaster-Thomas undermined the credibility of those comparables on two counts. Firstly, he rightly pointed out that none of them involved the sale of land which was subject to an Article 4 direction and where there were restrictions on the construction of stock proof fencing. On the contrary they were examples of deals where the purchaser was required to erect such fencing. There is a difference between a sale in which the purchaser is prepared to absorb the cost of fencing in order to maintain the utility of the proposed user and the subject reference where the compensating authority is arguing that a purchaser would not reduce his offer despite being unable to use the plot as a separate allotment. Secondly, Mr Edwards was not able to sustain his argument that two of the comparables showed that the lack of a direct access to land had had no effect on the purchase price.

41. Whilst I accept these criticisms of Mr Edwards' comparables I think nevertheless that they are helpful in illustrating a general point of importance in this case, namely that in a strong market a purchaser will be unable to negotiate a discount in the price paid due to onerous obligations or, by analogy, restrictions. Mr Woodhead accepted during cross-examination that there was a strong market at the valuation date and that in such a market there was likely to be less discounting of the asking price. Mr Edwards' comparables show that there was no discount in the price in the particular circumstances of those transactions. I am not persuaded by Dr Lancaster-Thomas' argument that in the subject reference the effective inability of the owner to use the plot as a separate allotment has caused loss or damage. As Mr Edwards pointed out prospective purchasers of the subject property may have many different motivations to buy and would not necessarily use the plot for this purpose or, if they did, that they would necessarily wish to keep livestock in the remainder of the field. Both parties accepted the attraction of the plot and field to purchasers in a strong market and the principle of no discounting enunciated by Mr Edwards from his comparables applies also to the reference property even though the details can be distinguished.

42. Mr Woodhead concluded that the depreciation in the value of the house, garden and plot was £7,500 which is 2% of the market appraisal made on that basis by Dart and Partners (or less than 2% if the field is included). In my opinion in a strong market and given the highly attractive position of, and outlook from, the reference property a prospective purchaser would not be able to negotiate such a small reduction in price as at the valuation date. In all the circumstances I consider that the market would absorb any disadvantage arising from the refusal of planning permission to erect a stock proof fence around the plot and would make no discount for it. I therefore agree with the compensating authority that no loss or damage is directly attributable to the refusal of planning permission following the making of the Article 4 direction and accordingly I find that no compensation is payable.

43. This decision determines the substantive issues in this reference. A letter on costs accompanies this decision which will take effect when, but not until, the question of costs is decided.

Dated 18 June 2007

A J Trott FRICS