CON/140/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – electricity – preliminary issues – reference by consent – deed of grant for easement of overhead electricity line – provision for additional payment if planning permission granted for residential development – whether barn conversion for holiday lets residential development – held that it was – whether compensation to be assessed at date of deed or date of entitlement to additional payment – whether notice of claim given in accordance with Land Compensation Act 1961 s 4(1)

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN **COLIN MOYCE** **Claimant**

and

NATIONAL GRID ELECTRICITY TRANSMISSION Plc **Respondent**

Re: Spelland Oast
Goatham Lane
Broad Oak/Brede
Nr Ryle
East Sussex
TN31 6EY

Before: The President

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 27 March 2008

Ulick Staunton instructed by Gullands on behalf of the claimant
Timothy Morshead instructed by Eversheds LLP on behalf of the respondent

The following cases are referred to in this decision:

Sirius International Insurance o v FAI General Insurance Ltd [2004] 1 WLR 3251
Beck v Scholz [1953] 1 QB 570
Walker v Ogilvy (1974) 29 P & CR 288
R v Newham LBC, ex p Medical Foundation (1998) 30 HLR 955
Walker v Kenley [2008] EWHC 370 (Ch)
Owen v Elliot [1990] Ch 786
Blackpool BC v Secretary of State for the Environment (1980) 40 P & CR104
Birmingham Corpn v Ullah [1964] 1 QB 178
Panayi v Secretary of State for the Environment (1985) 50 P & CR 109
Moore v Secretary of State for the Environment (1998) 77 P & CR 114

The following further cases were referred to in argument:

Sirius International Insurance Co (Publ) v FAI General Insurance Ltd [2004] 1 WLR 3251
English-Speaking Union of the Commonwealth v City of Westminster LBC (1975) 26 P & CR 575
Birmingham Corpn v West Midlands Baptist (Trust) Association (Inc) [1970] AC 874

DECISION ON PRELIMINARY ISSUES

1. This is a reference by consent in which the claimant seeks compensation under a deed of grant for the diminution in value of his land due to the presence of an overhead electricity line. Under the deed, which was dated 2 May 1966 and was made between Cyril George Warne as grantor and the Central Electricity Generating Board as grantee, Mr Warne granted to the Board for a consideration of £1750 an easement to place and maintain electric lines and works across his land at Spell Land Farm, Brede, Sussex. The lines and works, part of the Lydd-Bolney 400 kv line, were described in the Schedule to the deed as consisting of six quadruple conductors and an earth wire, and a tower for supporting them. It appears that they may already have been constructed at the time of the agreement, clause 5 providing:

> "THE written Consent to the placing of the electric lines over the said property hereinbefore described given to the Board by the Grantor and dated the Sixth day of December One thousand nine hundred and sixty two is hereby determined as from the day hereof and the electric lines shall be deemed to have been erected pursuant to these presents and not pursuant to the said written Consent."

2. The claimant is the successor to the grantor, having purchased the freehold interest in his land on 7 October 2002. On 23 January 2003 the claimant applied to the local planning authority, Rother District Council, for planning permission for "conversion of redundant barn to ancillary domestic accommodation/ holiday lets". From the plans included in the agreed bundle the barn appears to be about 40 metres from the line at its nearest point and about 70 metres from the tower. Planning permission was granted on 21 November 2003, the claimant having earlier, on 13 November 2003, entered into an agreement with the local planning authority under section 106 of the Town and Country Planning Act 1990. Both the permission and the agreement limited the use of the converted barn to holiday accommodation. The following conditions were included in the permission:

> "3. The premises shall be used for holiday lets only and for no other purpose in Class 3 Dwellinghouses of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that order.
>
> Reason: To ensure an appropriate use of the property in accordance with Government Advice contained in PPG7 The Countryside and the Rural Economy and Policy EM3 of the Rother District Local Plan: Revised Deposit (November 2003).
>
> 4. The proposed holiday unit shall not be occupied for more than 56 days in total in any calendar year by any one person.
>
> Reason: To prevent the unit being used as permanent residential accommodation contrary to Government Advice contained in PPG7 The Countryside and the Rural Economy and Policy EM3 of the Rother District Local Plan: Revised Deposit (November 2003)."

3. The section 106 agreement included the following covenants by the claimant:

> "3.1.3. That the Barn shall only be used and occupied for purposes of holiday accommodation and for no other purpose or purposes
>
> 3.1.4. That no person or persons shall occupy the barn or any part thereof for more than fifty-six days in total in any calendar year
>
> 3.1.5 That the Barn shall not be used or occupied by any person or persons for purposes of human habitation as a permanent dwelling
>
> 3.1.5 That neither the Barn nor the Main Dwelling shall be disposed of whether wholly or in part by way of gift lease sale or other transaction separately from the other nor shall any legal interested be granted transferred or created so that any person becomes a tenant lessee or owner of the Barn without having a similar interest in the Main Dwelling."

4. The barn was renovated during 2004 and 2005, and since 1 December 2005 it has been available for holiday lets.

5. The deed of grant contained the following provision:

> "3(1) THE Board hereby further covenants with the Grantor that if the Grantor shall at any time while this deed remains effective obtain planning permission under the Town and Country Planning Act 1962 or any statutory modification or re-enactment thereof for the time being in force for the development of the said property or some part or parts thereof for residential or industrial purposes the Board will within six months of being served by the Grantor with written notice of the granting of such permission pay to the Grantor compensation for any diminution in the value for such purposes of the said property or the part or parts thereof in respect of which planning permission shall have been obtained as aforesaid attributable to the existence of the electric lines upon the said property PROVIDED that the Grantor shall not be entitled to claim compensation under this sub-clause more than once in respect of the same or substantially the same intended development
>
> 3(2) The compensation payable by the Board to the Grantor pursuant to the provisions of sub-clause (1) of this clause shall be such sum as may be agreed between the parties when the question arises or in default of such agreement as may be determined by the Lands Tribunal pursuant to the provisions of sub-clause (3) of this Clause.
>
> 3(3) If any dispute or difference shall arise between the Grantor and the Board as to the amount of any compensation payable by the Board to the Grantor pursuant to the provisions of sub-clause (1) of this clause or as to any other matter or question arising out of the provisions of this clause the same shall be determined upon the reference of either party by the Lands Tribunal under the Lands Tribunal Act 1949 and the Land Compensation Act 1961."

6. On the application of the claimant, to which the respondent did not object, on 1 October 2007 I ordered that the following issues be determined as preliminary issues:

> "(a) Whether the grant of planning permission on 21 November 2003 for holiday lets was a grant of planning permission for residential or industrial purposes within the meaning of clause 3 (1) of the deed of grant dated 2 May 1966.
>
> (b) If so, whether any compensation payable to the Claimant under clause 3 (1) of the deed of grant dated 2 May 1966 as a result of the grant of planning permission on 31 November 2003 should be limited to such sum (if any) as is the difference between.
>
> (i) the principal amount of the compensation which would have been payable in respect of a compulsory acquisition of the interest granted by the deed in pursuance of a notice to treat served on the date of the deed, if the planning permission had been granted and remained in force at that date; and
>
> (ii) the price paid for the deed.
>
> (c) Whether by sending under cover of a letter dated 23 February 2005 from the Claimant to the Defendant a copy of a report of Mr Charles Dawson dated 16 February 2005, the Claimant thereby delivered a notice in writing of the amount claimed and which, in accordance with the requirements of section 4 (2) of the 1961 Act, identified the exact nature of the interest in distinguishing the amounts under separate heads and showed how the amount claimed under each head is calculated."

7. The first issue is whether the development permitted by the planning permission was for "residential...purposes" within the meaning of clause 3(1) of the deed. (There is no suggestion that it was for industrial purposes.) For the claimant Mr Ulick Staunton submitted that the permission, though it limited the use by condition to use for holiday lets, was nevertheless a permission for development for residential purposes. At the time of the deed the relevant statutory provisions, Mr Staunton said, were contained in the Town and Country Planning Act 1962. The Act did not define "residential", but in the Town and Country Planning (Use Classes) Order 1963, made under the Act, "residential" was used in a way that showed that it was not limited to use as a private dwelling-house. Class XI referred to "residential clubs", and these were included in the same class as hotels, boarding and guest houses, all of which were for occupation on a transitory basis. Planning permission for a residential club, Mr Staunton submitted, would trigger clause 3(1).

8. Mr Staunton relied on a number of cases in which the courts had considered the meaning of "residential". The first of these, *Owen v Elliot* [1990] Ch 786, concerned a private hotel, part of which was occupied by the owner and his family, the rest being let for both short holiday lets and longer lets. The issue was whether, for the purposes of the Capital Gains Tax Act 1979, the taxpayer in taking in boarders had let the property "as residential accommodation". The taxpayer argued that short terms lets of rooms in a guest house was a letting "as residential accommodation", so that he was entitled to the tax relief afforded by section 80(1). At 789F, Fox LJ said:

> "The first question is the meaning of 'residential accommodation' in the expression 'let by him as residential accommodation' in s 80(1). Does it include such lettings as were made by Mr and Mrs Owen in the hotel in this case? Mr Moses for the Crown accepted that as a matter of the ordinary use of English language it does ...."

9. Fox LJ referred to section 101 of the Act, which conferred an exemption in respect of a dwelling-house that was the "only or main" residence of the taxpayer, and he said this (p790A-C):

> "I see nothing in s101 which displaces what is accepted to be the ordinary meaning of the words 'residential accommodation'. Let it be accepted that s101 is concerned with dwelling houses that can reasonably be called 'homes'. In s101, it seems to me, the dwelling house acquires that status by language which bears no resemblance at all to that in s80. The draftsman of s101 achieves his purpose by referring to a dwelling house 'which is, or has at any time during his period of ownership, been his only or main residence'. It seems to me that those words, taken together, are what achieve the concept of home in s101 and there is nothing at all which resembles them in s 80 ... Mr Moses said that the concept of home is conveyed by word 'residence' alone. I do not feel able to accept that. A person may well have a residence or several residences which are not his home."

10. At 791 F-G Leggatt LJ said:

> "In ss 101 and 102 of the Capital Gains Tax Act 1979, the concept of occupation as a home is derived not from the use of the term 'residence' by itself, but from its use in the phrase 'his only or main residence'. In my judgment the expression 'residential accommodation' does not directly or by association mean premises likely to be occupied as a home. It means living accommodation, by contrast, for example, with office accommodation. I regard as wholly artificial attempts to distinguish between .... a letting to a lodger and letting to a guest in a boarding house; and between a letting that is likely to be used by the occupant as his home and one that is not."

11. Mr Staunton also referred to a number of planning cases. *Blackpool BC v Secretary of State for the Environment* (1980) 40 P & CR104 concerned an enforcement notice relating to a house in a predominantly residential part of a seaside resort. It alleged that there had been a change of use from use as a private dwelling-house to use for holiday lettings on a commercial basis. An appeal against the enforcement notice was successful on the ground that there had been no breach of planning control. The inspector said that, if the house was occupied by one family, whether on holiday or living in it permanently, the use was residential and in accordance within the permitted use as a private dwelling-house. The decision was upheld by a Queen's Bench Division Divisional Court.

12. In *Birmingham Corpn v Minister of Housing and Local Government* [1964] 1 QB 178 three private dwelling-houses, each of which had formerly been in the occupation of a single family, were let to a number of occupants paying a weekly rent. The owners' appeal against an enforcement notice was allowed on the basis that, since the use remained residential, there had been no material change of use. A Divisional Court held that the Minister was in error in

approaching the matter in this way. Whether there had been a material change of use was a matter of fact and degree and was not determined by the description of the use as residential. At 190, Lord Parker CJ referred to Class XI of the UCO – "use as a boarding or guest house, a residential club, or a hotel providing sleeping accommodation" – all of which, he said could loosely be called residential or houses where people dwell but which required provision in the UCO to ensure that a change from one of them to another did not constitute development.

13. In *Panayi v Secretary of State for the Environment* (1985) 50 P & CR 109 Kennedy J held that an inspector had been entitled to conclude that there had been a breach of planning control where the owner of a house for which conversion into four flats had been permitted used the premises to accommodate homeless families. He concluded that it was used as a hostel, and he said (at 117) that the "fact that, in the broadest sense, the property continued to be used for residential purposes does not mean that there could not have been a material change of use."

14. In *Moore v Secretary of State for the Environment* (1998) 77 P & CR 114, the issue was whether the conversion of parts of the outbuildings of a country house into ten self-contained units for use as holiday lets constituted a change of their use to use as single dwelling-houses so that the four-year time limit on enforcement action applied. The Court of Appeal held that it did. At 119 Nourse LJ, with whom Pill and Thorpe LJJ agreed, said:

> "Nor do ten self-contained units of residential accommodation which would otherwise be properly described as ten single dwelling-houses cease to be used as such because they are managed as a whole for the commercial purpose of holiday or other temporary lettings."

15. These cases, Mr Staunton said, showed that "residential" did not only mean a person's abode or house, but included residential accommodation to be occupied on a transient basis, whether as holiday lets or other short lettings. The November 2003 planning permission allowed Mr Moyce to provide something residential. Therefore the permission was for "residential purposes."

16. For the respondent Mr Timothy Morshead submitted that clause 3(1) pointed a contrast between "residential and industrial purposes" on the one hand and different "purposes" on the other. Development for commercial purposes did not qualify, and use for holiday lettings was therefore outside the scope of the provision. He referred to a number of cases in which the word "residential" or "residence" had been held to import the concept of use as a person's home. In *Beck v Scholz* [1953] 1 QB 570, a decision under the Rent Restrictions Acts (which gave protection to the tenant of a dwelling-house, defined in the Acts as "a house let as a separate dwelling or a part of a house being a part so let") the Court of Appeal held that a tenant, who made little use of a flat but retained it as a pied-à-terre, was not entitled to protection as the flat was not in his personal occupation as a home. *Walker v Ogilvy* (1974) 29 P & CR 288 was another example of a decision to the same effect. In *R v Newham LBC, ex p Medical Foundation of the Care of Victims of Torture* (1997) 30 HLR 955, the question was the meaning of "residential accommodation", in section 21(1)(a) of the National Assistance Act 1948, which empowered a local authority to make arrangements providing "residential accommodation for persons aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of

care and attention which is not otherwise available to them." At 959, Moses J said that counsel for the local authority –

> "suggested that the fact that the word 'residential' remains in place in the section indicates that the accommodation referred to is of the type for which he contends, accommodation with an institutional quality. In my judgment, no such reliance can be placed upon the use of the word 'residential'. It means no more than accommodation where a person lives."

17. In *Walker v Kenley* [2008] EWHC 370 (Ch), 29 February 2008, Mr Philip Sales QC sitting as a Deputy High Court Judge, had to construe a clause in the sale of property at a hotel in Cornwall, which provided for overage if "the buyer obtains planning permission to develop the property as residential flats". He said at paragraph 16(5):

> "In addition, I consider that the natural meaning of the composite expression 'residential flats' is that it refers to flats which the occupier would regard as their residence, which would not be a natural description of a holiday apartment."

18. These cases, Mr Morshead said, were consistent with the view that, as a matter of ordinary language, development for "residential purposes" means development for the purposes of providing accommodation that an occupier would regard as his residence. This is what the word meant as a matter of ordinary English, and the correct approach to interpretation, he said, was to start with this meaning and then to see if any expansion or restriction was needed. There was no need in the present context to give an extended meaning to the word.

19. The question for determination is whether the grant of planning permission for the "conversion of redundant barn to ancillary domestic accommodation/holiday lets" is planning permission for development of part of the property for residential purposes for the purpose of the operation of clause 3 of the deed of grant. The meaning of "development...for residential purposes" has to be considered in the light of the nature of the deed of grant, the period at which it was made and the context of the provision itself. The amount of assistance to be derived from cases in which "residential" or "residence" (or, for that matter, "dwelling" or "dwelling-house") have been considered is in my view limited.

20. What is conveyed by the adjective "residential" will inevitably, it seems to me, depend on the particular noun that it qualifies and the context in which it is used. In some contexts it may imply no more than simply living accommodation, while in others it may imply living accommodation of a permanent rather than a transitory nature, accommodation that is used as a person's residence or home. A "residential flat" is likely to mean a flat that is used as a residence or home. That is because a flat is itself living accommodation, so that the addition of "residential" must imply something more than this. On the other hand "residential accommodation" is likely to mean accommodation for living purposes, the adjective being used in order to distinguish it from accommodation used for other purposes, for example office purposes: see *Owen v Elliott*. The 1963 Use Classes Order, to which Mr Staunton referred, attached "residential" to other nouns – "residential club" (Class XI) "residential or boarding school", "residential college" (Class XII) –

while Class X referred to "a consulting room or surgery unattached to the residence of the consultant or practitioner".

21. What has to be considered here is a deed of grant for an overhead line in respect of which the grantor is to receive a sum of money and which enables him to claim compensation, if planning permission is granted in the future for development for residential or industrial purposes, for the amount by which the existence of the line diminishes the value of the property for such purposes. Such lines were, and are, constructed, except to a very limited extent, across open, undeveloped land, usually in agricultural use. Why the limitation to "residential or industrial purposes"? It seems to me that the most likely explanation is that at that time it was principally for these purposes that undeveloped land was released for private, profitable development. Section 4(3) of the Town and Country Planning Act 1962, re-enacting the equivalent provision of the 1947 Act, provided for development plans that would "allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the plan." It was no doubt deemed sufficient in the deed to refer to residential or industrial purposes without seeking to think of other types of profitable development that might be listed in addition.

22. Section 17(1) of the Land Compensation Act 1961, before amendment in 1975, excluded from land for which a certificate of appropriate alternative development might be sought an area "allocated primarily for a use which is of a residential, commercial or industrial character." I have considered whether the appearance of "commercial" here and its absence in the deed of grant is significant, but I do not think that it is. The provision in section 17(1) was there to indicate broad categories of development, and planning permission for such use as was allocated in the development plan was to be assumed under section 16(1). There was no need to distinguish between them for the purpose of the exclusion in section 17(1). "Residential" and "industrial" in the deed similarly identify broad categories of use. Of course, where areas of land were allocated for residential development it was for the provision of housing, for homes for people to live in. That reflection is, however, insufficient to persuade me that the ambit of "development for residential purposes" in the deed requires to be construed restrictively. "Residential" and "industrial" are there as broad categories representing, as I have said, the principal classes of profitable development, and there is no discernible justification for seeking to restrict their meaning. The more restricted meaning that "residential" may imply when qualifying particular nouns has no place in this context, in my judgment. Planning permission for conversion of a barn to "ancillary accommodation/holiday lets" was therefore planning permission for development for residential purposes within the meaning of clause 3(1).

23. The second issue is whether, under clause 3(1), the diminution in the value of the property, or the relevant part or parts of the property, following the grant of planning permission is to be assessed as at the date of the deed or as at the date of the event (probably the grant of permission) triggering the right to compensation. Mr Staunton submitted that the latter was correct since the wording of clause 3 was couched in the present. Mr Morshead relied on the reference in clause 3(3) to the Land Compensation Act 1961. This, he said, imported the provisions of section 23 of the 1961 Act, which dealt specifically with the question of additional compensation following the subsequent grant of planning permission. Section 23 provides:

> "Compensation where planning decision made after acquisition

23. (1) Where –

(a) any interest in land is compulsorily acquired or is sold to an authority possessing compulsory purchase powers and, before the end of the period of ten years beginning with the date of completion, a planning decision is made granting permission for the carrying out of additional development of any of the land; and

(b) the principal amount of the compensation which was payable in respect of the compulsory acquisition or, in the case of a sale by agreement, the amount of the purchase price, was less than the amount specified in subsection (2) of this section,

then, subject to the following provisions of this section, the person to whom the compensation or purchase price was payable shall be entitled, on a claim duly made by him, to compensation from the acquiring authority of an amount equal to the difference.

(2) The amount referred to in subsection (1)(b) of this section is the principal amount of the compensation which would have been payable in respect of a compulsory acquisition of the interest by the acquiring authority, in pursuance of a notice to treat served on the relevant date if –

(a) the planning decision mentioned in subsection (1)(a) of this section had been made before that date; and

(b) the permission granted by it had been in force on that date."

24. Mr Morshead said that it was the clear intention of the parties to incorporate the approach of section 23, subject to two adjustments. The first was that the extra compensation was to be available for an open-ended period rather than for 10 years only. The second was that extra compensation was only to be payable for one or other of the two specific types of development. But in any event it would make no sense, where the Board had paid full compensation in 1966 for a permanent wayleave, to require it to pay again for the right in the future. The provision required it to pay extra compensation, but only by increasing the 1966 amount at 1966 values.

25. It does not seem to me that section 23 of the 1961 Act has any application here. Part II of the Act deals with the determination of the amount of compensation for land that has been compulsorily acquired, and section 23 provides for additional compensation where permission is subsequently granted on that land. Part II is not concerned with compensation for injurious affection. That arises, where land is taken, under section 7 of the Compulsory Purchase Act 1965. In the present case the land acquired was an easement, and the payment of compensation that is now sought is for injurious affection to other land. There has been no grant of planning permission on the land acquired. Where clause 3(3) says that any dispute as to compensation "shall be determined upon the reference of either party by the Lands Tribunal under the Lands Tribunal Act 1949 and the Land Compensation Act 1961" it is, in my judgment, clearly referring to Part I of the 1961 Act alone. Part I deals with the determination of questions of disputed compensation and covers procedural matters and costs. It is readily applicable to a claim for additional compensation under the deed, whereas Part II (and the rest of the Act), which is concerned with the land that has

been compulsorily acquired, is not. The sequence of references – first the 1949 Act, then the 1961 Act – implies clearly, in my view, that it is the procedural provisions of the 1961 Act that are being referred to.

26. Clause 3 does not fall, therefore, to be construed by reference to the provisions of section 23, or any of the provisions of the 1961 Act relating to compensation for land acquired. It is to be construed in itself and in the light of its purpose. Its purpose is clear – to compensate the grantor, where planning permission is granted for residential or industrial development, for the diminution in the value of his land for such purpose because of the presence of the line. It does not seem to me that this suggests either that the date of grant is the relevant date for assessment or that the triggering event is. The wording of clause 3, however, is couched in the present and this, in my view, in the absence of any reference back to the date of the grant, is sufficient to make it more probable that it is the date of the triggering event that is material. I do not find any other pointers in the words used. Thus the reference in clause 3(2) to "such sum as may be agreed between the parties when the question arises" does not in itself suggest that the parties are to agree values as at the date when the question arises. There is nothing, however, that might be argued to imply that values are to be taken as at the date of the deed.

27. The third issue is one that I can deal with very shortly. The compensating authority have suggested that the claimant has not so far given notice of his claim in accordance with section 4(1) of the 1961 Act, so that he is at risk as to costs. It is said that there has been no compliance with subsection (2), which requires the claimant to "give details of his claim, distinguishing the amounts under separate heads and showing how the amount under each head is calculated."

28. On 23 February 2005 the claimant's solicitors wrote to the surveyors acting for the compensating authority:

> "We therefore enclose herewith the report of Charles Dawson of Dawson Associates dated 16 February 2005 for your consideration and from which you will note Mr Dawson values our Client's claim at £264,800.
>
> Under the terms of the Deed of Grant of 2 May 1966 your Client covenanted at clause 3(1) thereof to pay compensation for any diminution in the value to our Client within six months of being served with written notice of the granting of the relevant planning consent. Our Client served the relevant planning consent on your Client on 15 December 2003 and has been extremely patient in the negotiation to agree a settlement figure. Nonetheless given the wide variance between our Client's claim and the case which you seek to make on your Client's behalf, our Client is of the view that unless this can be settled within fourteen days of the date of this letter the matter will have to be referred to the Lands Tribunal for the level of compensation to be determined.
>
> We will now look forward to hearing from you accepting the claim advanced by our Client being compensation at the level specified in Mr Dawson's report in the specified time limit, failing which we will advise our Client to make immediate reference to the Lands Tribunal."

29. Mr Dawson's report set out how the amount claimed, £264,800 was calculated. He set out his calculation of the loss of income from holiday lets that he attributed to the presence of the line, and he capitalised this at 10 years' purchase. The letter of 23 February 2005 and the accompanying report were, in my judgment, clearly sufficient to comply with section 4(1) and (2), and I do not understand how the contrary is arguable. It is said that the claim fails to give an indication of whether the amount claimed is for severance or disturbance or market value, but there is nothing in this point. If the evidence does not establish that the claimant's land has been diminished in value by the amount claimed, he will not succeed to the full extent of that claim. But the compensating authority has been told what his claim was and how it was calculated. This third issue must therefore be determined in the claimant's favour.

30. I accordingly determine as follows the preliminary issues.

(a) Yes: the grant of planning permission on 21 November 2003 for holiday lets was a grant of planning permission for residential purposes within the meaning of clause 3(1) of the deed of grant.

(b) No: compensation should not be limited to the difference between (i) the principal amount of compensation that would have been payable in respect of the compulsory acquisition of the interest granted by the deed in pursuance of a notice to treat served on the date of this deed if this permission had been granted and remained in force at that date and (ii) the price paid under the deed.

(c) Yes: the letter of 23 February 2005 and the report enclosed with it complied with the requirements of section 4(2) of the 1961 Act.

31. The parties are now invited to make submissions on costs, and a letter dealing with this accompanies this decision, which will become final when the question of costs has been determined. Directions for the further conduct of the reference will be given later.

Dated 3 April 2008

George Bartlett QC, President

Addendum on costs

32. I have received written submissions from the parties on costs. The claimant seeks his costs of the preliminary issues, on the basis that the issues were raised by the respondent and that he has been successful on them. The respondent submits that the costs should be reserved so that they can be considered in the light of the determination of the amount of compensation, and in particular so that admissible offers to settle can be taken into account.

33. Although on the face of it the claimant should receive his costs since he has been successful, whether he should in fact receive them is clearly a matter that could be affected by the final decision in this case and any offers to settle that have been made. The right order in my view, and the one I therefore make, in respect of the costs of the preliminary issues, is: claimant's costs reserved.

Dated 25 April 2008

George Bartlett QC, President