



LCA/79,83,84,85,86,92,93,98,100,103,104,110,111,114,116 & 117/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – residential dwellings – claims for injurious affection caused by the effects of physical factors following construction of a new road – Land Compensation Act 1973 Part 1

IN THE MATTER OF 16 NOTICES OF REFERENCE

BETWEEN

Mrs MINNIE WOLFF (1)
MISS JANE BUTTERWORTH (2)
MR DOMINICO PIERONI & MRS ROSE ANNE PIERONI(3)
MISS PAMELA WATERS (4)
MRS ANN MARY HENMAN (5)
MR TREVOR MICHAEL WILDING & MRS J N WILDING (6)
MISS DOREEN VIOLET JENKINSON (7)
MISS EVA CAROLINE ACTON (8)
MS PAMELA HARRIS (9)
MR KENNETH ERNEST PAYNE (10)
MRS DOROTHY LILLIAN FIDDERMAN (11)
MS MICHELE DOBSON (12)
MR GIORGIO SIKKING & MRS MARY SIKKING (13)
MISS JULIA DILLANE (14)
MR MOHAMMED ASLAM-BHATTI (15)
MISS MARY DILLANE (16)

Claimants

and

TRANSPORT for LONDON

**Compensating
Authority**

Re: Properties in Wanstead, London E11

Before: P R Francis FRICS and N J Rose FRICS

**Sitting at: Procession House, 110 New Bridge Street, London EC4V 6JL
On 2 – 6 June 2008**

Cllr Allan Burgess, with permission of the Tribunal for four of the claimants, the remainder in person or with the assistance of a litigation friend
Tim Buley, instructed by TfL Legal Services for the compensating authority.

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DECISION

Introduction

1. This decision is concerned with sixteen references to determine the compensation payable by Transport for London (TfL) under Part 1 of the Land Compensation Act 1973 (the 1973 Act) following the coming into operation of a highway improvement scheme at Cambridge Park and Eastern Avenue (A12), Wanstead, London E11 on 4 August 1999. The references were originally set down under the Tribunal's simplified procedure (rule 28, Lands Tribunal Rules 1996) under which each case would have been heard individually by a single Member. They were re-assigned to the standard procedure on 20 August 2007 by order of the President, who considered that the most satisfactory way for the references to be determined was to have them heard together in the course of a single week by two surveyor Members.

2. The claimants, their properties and their representatives at the hearing, with permission of the Tribunal where necessary, were:

| | | | |
|---------------------------|--------------|--|---|
| Mrs Minnie Wolff | LCA/79/2006 | 60 Mansfield Road, Wanstead E11 2 JN | Represented by her daughter, Mrs Elaine Laurie |
| Miss Jane Butterworth | LCA/83/2006 | 50 Mansfield Road, Wanstead E11 2JN | Represented by Cllr Allan Burgess |
| Mr & Mrs Dominico Pieroni | LCA/84/2006 | 10 Corbett Road, Wanstead E11 2LD | Represented by Mr D Pieroni |
| Ms Pamela Waters | LCA/85/2006 | 128 Gardner Close, Wanstead E11 2HP | Represented by Cllr Allan Burgess |
| Mrs Ann Henman | LCA/86/2006 | 6 Nadir Court, 14 Blake Hall Road, Wanstead E11 2QE | Represented by Cllr Allan Burgess |
| Mr & Mrs Trevor Wilding | LCA/92/2006 | 22 Addison Road, Wanstead E11 2RG | Represented by Mr T Wilding |
| Miss Doreen Jenkinson | LCA/93/2006 | 13 Sydney Road, Wanstead E11 2JW | Representing herself |
| Miss Eva Acton | LCA/98/2006 | 26b Cambridge Road, Wanstead E11 2PN | Representing herself |
| Ms Pamela Harris | LCA/100/2006 | 26 Mansfield Road, Wanstead E11 2JN | Representing herself |
| Mr Kenneth Payne | LCA/103/2006 | 6 Chester Road, Wanstead E11 2JR | Representing himself |
| Mrs Dorothy Fidderman | LCA/104/2006 | 11 Sydney Road, Wanstead E11 2JW | Represented by her son, Paul |
| Ms Michele Dobson | LCA/110/2006 | 16 Redbridge Lane West, Wanstead E11 2JU | Represented by Cllr Allan Burgess |
| Mr & Mrs Giorgio Sikking | LCA/111/2006 | 10 Felstead Road, Wanstead E11 2QJ | Represented by Mr G Sikking |
| Miss Julia Dillane | LCA/114/2006 | 10 Hardwick Court, 31 Cambridge Park, Wanstead E11 2PT | Represented by Ms Catherine Mc Pherson, litigation friend |

| | | | |
|--------------------------|--------------|---------------------------------------|--|
| Mr Mohammed Aslam-Bhatti | LCA/116/2006 | 8 Corbett Road, Wanstead E11 2LD | Representing himself |
| Miss Mary Dillane | LCA/117/2006 | 28 Preston Drive, Wanstead E11 2JB | Represented by Ms Catherine McPherson, litigation friend |

3. Mr Tim Buley of counsel appeared for the compensating authority and called Mr Kenneth Roger Tompsett BSc MIOA of Atkins Acoustics who gave evidence on noise, and Mr Jonathan Duncan Connell, Tech RICS, of Lambert Smith Hampton who gave valuation evidence. None of the claimants called any expert evidence.

Facts

4. The parties were unable to agree a statement of facts and issues to be resolved, but from the evidence and our accompanied inspection of the claimants' properties, the scheme and surrounding area, undertaken on 25 June 2008, we find the following facts. The scheme was known generically as the A12 Hackney to M11 Link Road (referred to hereafter as "the link road") and now comprises a 4 mile (6.4 km) dualled two and three lane carriageway, together with its associated slip roads, which links the A102(M) (serving Blackwall Tunnel) in the west to the Redbridge Roundabout junction with the A406 North Circular Road in the east. The scheme was devised, in part, to alleviate serious traffic congestion along that section of the A12 which had been particularly severe along the two-way, non-dualled Cambridge Park in Wanstead. Having received the go-ahead in 1992, work commenced on the scheme, which was split into four major contracts, in September 1993. Contract 4, described as "The Green Man to Redbridge Roundabout" section, within the area of which all the claim properties are located, was the first to open (on 4 August 1999), followed shortly thereafter by the remaining three sections.

5. Contract 4 comprised the new dual carriageway running from a point just to the east of the re-configured Redbridge Roundabout (where the road runs beneath it (Contract 3)), immediately to the south and following the line of Cambridge Park Road and Cambridge Park. Proceeding in an easterly direction, and slightly to the west of the (new) Blake Hall Road overbridge, the road enters a deep cutting that leads into a tunnel beneath George Green and what was the former junction with Wanstead High Street to the north and The Green to the south. To accommodate this new section of road, a number of properties that formerly fronted the south side of Cambridge Park were demolished. The link road emerges into another cutting slightly to the east of the former High Street/The Green junction, where Cambridge Park became the Eastern Avenue dual carriageway at a point directly in line with Mansfield Road, which previously connected to the west-going carriageway. It is at this location that new slip roads have been constructed, known as Kingfisher Avenue to the north (giving eastbound access) and Harrier Avenue to the south (giving westbound egress). To facilitate the construction of Harrier Avenue, the end houses on each side of Mansfield Road and Camden Road were demolished, together with a shop. The link road then continues eastwards, with a left-turn only junction into Preston Road just beyond the new eastbound access, and onward to the Redbridge Roundabout.

6. A total of 4,289 part 1 claims were lodged over the four contract sections. All of these were settled by agreement, apart from the sixteen relating to Contract 4 which form the subject of these references, and one other.

The Statutory Provisions

7. The right to compensation under Part 1 of the Land Compensation Act 1973 is conferred by section 1 which provides (where appropriate to these references):

“Right to compensation

1. – (1) Where the value of an interest in land is depreciated by physical factors caused by the use of public works, then, if –

- (a) the interest qualifies for compensation under this Part of the Act; and
- (b) the person entitled to the interest makes a claim [after the time provided] by and otherwise in accordance with this Part of this Act,

compensation for that depreciation shall, subject to the provisions of this Part of this Act, be payable by the responsible authority to the person making the claim (hereafter referred to as “the claimant”).

(2) The physical factors mentioned in subsection (1) above are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge on to the land in respect of which the claim is made of any solid or liquid substance.

(3) The public works mentioned in subsection (1) above are -

- (a) any highway;

(4) The responsible authority mentioned in subsection (1) above is, in relation to a highway, the appropriate highway authority...

(5) [With the exception of aircraft at an aerodrome] the source of the physical factors must be situated on or in the public works the use of which is alleged to be their cause.

(9) Subject to section 9 below, “the relevant date” in this part of this Act means -

- (a) in relation to a claim in respect of a highway, the date on which it was first open to public traffic.”

Section 2 deals with the types of interest which qualify for compensation. It is agreed that all the claimants qualify.

“Claims

3. – (2) Subject to the provisions of this section and of sections 12 and 14 below, no claim shall be made [before the expiration of twelve months from the relevant date; and the day next following the expiration of the said twelve months is in this Part of this Act referred to as ‘the first claim day’.]”

“Assessment of compensation: general provisions

4. – (1) The compensations payable on any claim shall be assessed by reference to prices current on [the first claim day]

(2) In assessing depreciation due to the physical factors caused by the use of any public works, account shall be taken of the use of those works as it exists on [the first claim day] and of any intensification that may then be reasonably expected of the use of those works in the state in which they are on that date.

6. – The compensation payable on a claim shall be reduced by an amount equal to any increase in the value of –

(a) the claimant’s interest in the land in respect of which the claim is made; and

(b) any interest in other land contiguous or adjacent to the land mentioned in paragraph (a) above to which the claimant was entitled in the same capacity on the relevant date,

which is attributable to the existence of or the use or prospective use of the public works to which the claim relates.”

It was agreed that under section 1(1), TfL was the “responsible authority”; that the date upon which the highway was first opened to public traffic (section 1(9)(a)) was 4 August 1999; and that the “first claim day” under section 3(2) and the valuation date under section 4(1) were both 4 August 2000.

Preliminary

8. None of the claimants produced any expert evidence. Generally, their cases took the form of descriptions of the effects of the link road on their properties, coupled with criticisms of TfL’s expert evidence and approach to the assessment of compensation. We therefore start by summarising the evidence of TfL’s experts. We then state the conclusions we have drawn from the claimants’ evidence, followed by our conclusions on TfL’s case.

Compensating authority’s case

9. Mr Tompsett is a Technical Director of Atkins Acoustics, Noise and Vibration Division, where he has worked since 1974. He has a degree in electrical engineering, is a member of the Institute of Acoustics and is their specialist examiner in the subject of transportation noise. He explained his involvement with the link road scheme as leader of a team of acousticians who studied the potential noise impact of various options for the proposed A12 improvement through Wanstead from the early 1980s. He said that he gave evidence on noise impact before the two Public Inquiries into the road proposals in 1983 and 1987, based upon the original noise impact assessment that had been undertaken in 1983, and updated in 1987. The assessment was further reviewed and updated in 1989 (based upon the scheme as now constructed), and it was that review which formed the basis of his report. The 1989

assessment took into account changes in calculation methodology (which is being used to this day). All the assessments were undertaken using Atkins' RoadNoise computer software, a 3D computer model used as the industry standard in implementing the 'Calculation of Road Traffic Noise' procedure. He was only able to provide expert evidence on noise. Any other physical factors such as vibration, smell, fumes and artificial lighting were beyond his remit.

10. Mr Tompsett explained that the actual noise readings took into account noise levels from all roads in the vicinity that carried significant volumes of traffic, and such matters as screening by buildings and other obstructions. The predictions for future noise levels were based on an assumed traffic speed of 50mph from the Lea Interchange to the start of the Green Man Tunnel, and 40mph through the Green Man Tunnel and to the east; anticipated increases in traffic flows; the provision of purpose built noise barriers, cuttings and tunnels, and "bounce" or sound reflection off buildings and other objects. They also assumed a standard bituminous asphalt road surface. Noise was measured in decibels (expressed as dB(A)) and was defined as the arithmetic average values of L_{10} for each of the 18 one-hour periods between 06.00 and 24.00. $L_{10(18\text{ hr})}$ is the level of noise exceeded for 10% of the time over a period of 18 hours. As an example, Mr Tompsett referred to the readings taken 1 metre in front of the west (rear) facade of 58 Mansfield Road at both ground and first floor levels. The prevailing noise levels in the 1989 survey were 72.9 dB(A) at both levels, and those predicted for 2009 were 61.8 and 62.2 dB(A) respectively, meaning an effective assumed reduction of 11 dB(A) at that point. Readings taken at the front revealed a predicted 3 dB(A) reduction. This was due to the fact that the new road would emerge from the tunnel into a deep cutting immediately at the top of Mansfield Road, the cutting together with its 1 metre high parapet wall acting as a noise barrier. He said that as one moved further away from the new road, noise levels from it would decrease, and other noise sources would come into play, to produce an "ambient" noise level. It was not just the distance from the road that was taken into account: factors such as the orientation of the property's facade, the height of the new road in comparison with the testing point, the level of intermediate screening such as trees and other buildings, and any direct screening that had been provided as part of the road construction programme were also relevant. Whilst Mansfield Road suffered less noise as a result of the new road, streets where noise levels increased included Woodcote Road and Selsdon Road. In this area a line of properties on the south side of Cambridge Park had been demolished to make way for the link road. In consequence, not only had the screening effect of the former properties been lost, but also the new road was very much closer to houses in those two streets.

11. An exercise had been undertaken to assess the amount of noise contributed by the new road to the total noise level as required by the Noise Insulation Regulations. These operated in such a way, Mr Tompsett said, as to make it possible for a property to qualify for noise insulation (eg double glazing) even when the majority of noise emanated from an unaltered road, and only a small proportion of noise originated from traffic on the new road. Whilst claims under Part 1 of the 1973 Act applied only to physical factors arising from the new road, and did not therefore include the effect of changes in traffic flows on other roads, this assessment procedure was, he understood, the standard basis used in determining compensation payable under the Act. Increased noise on unaltered roads caused, for instance, by "rat-running" created as a result of the new road, could serve to mask the impact of additional noise from the new road. Although, as Mr Connell would explain, the level of compensation offered largely depended upon the predicted increase in noise resulting from the new road (including the new slip roads), the fact was that a more expensive Masterpave stone mastic asphalt had

been used on the new road (although not on the slip roads) than that which had been assumed in the noise model, reducing noise levels by 3 dB(A). This was, he said, a mitigating factor that had not been reflected in the offers of compensation; the compensation offers were based upon the higher predicted readings.

12. Mr Tompsett said that it was only possible to assess the future effects of the provision of a new or altered road by the use of predictions, and the use of very sophisticated computer software was preferable to using actual readings. Actual readings could be affected by extraneous factors such as varying traffic flows (holidays, hold ups etc), whether the road surface was wet or dry, wind speed and direction, aircraft noise and even someone mowing their lawn within the vicinity of the meter. The computer model produced much greater accuracy, as had been found to be the case in comparison tests over a period of some 25 years. Moreover, during construction work (which began in 1993), traffic levels on existing roads would have been affected, and noise levels from the vicinity of the new road would have been reduced, having the effect of creating a bigger apparent increase once the scheme opened. 'Before and after' data had been collected which compared traffic flows in the period 1989 to 1992 (just before construction work commenced) and between February and March 2001. Whilst the prediction model had forecast 88,400 vehicles per day (vpd) for the 'Relevant Year' (2009) using the new link road at a point east of the tunnel and close to the junction with Preston Drive, the actual traffic count taken in 2001 was 75,000 vpd. This was effectively a reduction of 15% on the predicted flow on which noise estimates had been based. That was another mitigating factor not reflected in offers made to the residents, which had been based upon the higher predicted levels.

13. During the course of cross-examination, it was pointed out that the only actual noise readings were taken in 1983, some 25 years before the relevant date for the assessment of compensation, when traffic levels and vehicle types were very different. Mr Tompsett responded by saying that the roads that were monitored were already saturated by traffic in 1983 and the checks that were undertaken in 1999 demonstrated that noise levels had fallen or remained unchanged over the same sections. The computer software that was used for the noise predictions, he said, took into account changes in vehicle technology and better road surfaces. The fact was, he stressed, that vehicles had become quieter and produced less pollution than they did 25 years ago. On the question of noise emanating from the tunnel, and within the cuttings, Mr Tompsett accepted that there was a certain amount of "bounce" with sound reflecting off the cutting walls, which whilst meaning properties nearest to these sections would undoubtedly be quieter at ground floor level, could lead to noise increases in upper floors.

14. Mr Connell is an associate director of Lambert Smith Hampton, Property Solutions, based at their Chelmsford office. He is a Technical Member of the RICS, has had over 20 years valuation experience and, since joining his current firm in 2001, has settled over 11,000 claims under part 1 of the 1973 Act, including all those relating to this scheme. He said that he was particularly familiar with the area and, in respect of his negotiations with agents and individuals, he had had regard to the W S Atkins [now Atkins] "A12 Hackney to M11 Link Road Assessment for Requirements for Noise Insulation Against Traffic Noise" report of September 1989, and their "Hackney/M11 Link Road Before and After Survey Analysis" dated May 2001. It was evident that traffic had increased through Wanstead in the area of the claim

properties, but due to the cuttings, tunnel and the particular type of road surface used on the main carriageways (not the slip roads), noise levels had, in general, reduced. Mr Connell said that whilst Atkins' noise reports had assisted him in his assessment of diminution in value, if any, in particular cases, his analysis of the market indicated that noise had little effect upon values. Having said that, he accepted that changes in the type of noise could be of concern, and the fact that there was now a motorway type 'drone' along unscreened sections of the road had been reflected in some of his offers of compensation.

15. Mr Connell said that the property market was extremely buoyant during 2000 and it was his view that in such conditions purchasers of residential property tended to be less sensitive to noise related issues than they would be in a buyers' market. Information on property values had been obtained from claimants' agents and from his own researches, and a standard approach to the valuation exercise had been agreed with the five firms of agents who between them had previously acted for all sixteen claimants. The standard approach comprised the selection of a "beacon" property for each of four specific residential areas (Areas A – D) which was considered to have been unaffected by the scheme. Its type, age, size and apparent condition (from an external inspection) were recorded, as was its distance from the nearest part of the main link road carriageway (not the slip roads), measured from the point at which the building or its plot was nearest to the new road. He then agreed with the agents which was the worst affected property, similar in physical character to the beacon property, and valued that property by reference to sales evidence. Consistently applied adjustments were made to reflect any significant differences, eg end or middle terrace, existence of garage, extensions, and/or double-glazing. Further adjustments were then made to take account of the sale date as against the valuation date for each property (from the Nationwide index). Any reduction in value was apportioned between physical and non-physical factors to give an appropriate percentage reduction qualifying for compensation. Non-physical factors included, for instance, increases in traffic in front of a claim property created by "rat-running" as a result of the new road layout including access and egress points to and from it. Once these calculations had been carried out, a percentage plan was produced, which showed the level of compensation offered to the worst affected properties (closest to the road or most significantly affected by noise increases), reducing on a quarter or half-point basis the further away and less noise affected properties were.

16. The evidence of sales in Wanstead did not show conclusively that values had been affected. Mr Connell thought this was due to the fact that, prior to the construction of the link road, properties in this area had always been seriously affected by noise. In general terms, the worst affected areas along the route of Contract 4 were to the south of Cambridge Park (for example in Selsdon Road), where a line of properties had been removed to facilitate the construction of the new dual carriageway to the east of the re-configured Green Man roundabout. Many of the properties upon which claims were still outstanding had been very seriously affected by noise pre-scheme, and in such cases the percentages offered were reduced accordingly. He said out that Part 1 compensation was only payable if it could be proved that there was a connection between diminution in value and the relevant physical factors. In his opinion there was no obvious connection in respect of a number of the claim properties and, in the absence of definitive evidence, offers had been made in the context of the overall tone of settlements.

17. Mr Connell said that all the claims had been made on the basis of the effects of noise. Pollution (in its Part 1 sense) had not initially been an issue; it had only been referred to by one of the claimants' agents.

Summary of valuations

18. We set out below the figures of compensation which were put forward by the parties at the commencement of the hearing:

| Address | Amount claimed | Mr Connell's valuation |
|------------------------|-----------------------|-------------------------------|
| 60 Mansfield Road | £39,000 | £4,750 |
| 50 Mansfield Road | £20,000 | £2,450 |
| 10 Corbett Road | £21,120 | £4,300 |
| 128 Gardner Close | £22,000 | £5,100 |
| 6 Nadir Court | £ 8,000 | £1,550 |
| 22 Addison Road | £ 6,855 | £2,000 |
| 13 Sydney Road | £29,239 | £1,700 |
| 26b Cambridge Road | £ 7,500 | £ 500 |
| 26 Mansfield Road | £28,000 | Nil |
| 6 Chester Road | £26,000 | Nil |
| 11 Sydney Road | £25,000 | £1,600 |
| 16 Redbridge Lane West | £70,000 | Nil |
| 10 Felstead Road | £31,200 | £3,900 |
| 10 Hardwick Court | £10,000 | £5,550 |
| 8 Corbett Road | £20,000 | £4,050 |
| 28 Preston Drive | £22,000 | £4,400 |

19. During the course of the hearing, as the result of matters raised by the claimants or the Tribunal, Mr Connell increased four of his valuations as follows:

10 Hardwick Court from £5,550 to £5,750

6 Nadir Court from £1,550 to £3,900

10 Felstead Road from £3,900 to £4,100

22 Addison Road from £2,000 to £2,500

20. There was at one stage an issue as to the date from which interest was payable on the compensation in respect of 10 Hardwick Court. It is now agreed that the appropriate date is 18 August 2000.

The claimants' case – conclusions

21. As we have said, in general the cases put forward by the claimants consisted of a critique of Mr Connell's valuations. We deal with those criticisms in due course, but first we consider the evidence of Miss Jenkinson and Miss Dobson, both of whom relied on sales evidence to support their case that the scheme had resulted in a substantial reduction in values generally.

22. Miss Jenkinson carried out an exercise to ascertain the rate of increase in values, between 1991/92 and 1999/2001, of houses in two areas. The first, which she termed "Wanstead Village", covered approximately 111 houses in Cowley Road and Halstead Road, situated some 500 metres to the north of the link road. The second, "the blighted Wanstead area", contained about 77 houses in Mansfield Road, Chester Road, Camden Road and Sydney Road, all of which fell within area A for the purposes of Mr Connell's beacon property exercise. Miss Jenkinson calculated that, in 1991/92, the Wanstead Village properties were worth 3% more than properties in the "blighted area". This estimate was arrived at by using figures quoted on estate agents sales particulars. By 1999/2001 this difference in value had increased to 24%, based on figures taken from estate agents particulars and HM Land Registry records. Miss Jenkinson concluded that the overall depreciation in value of two bedroom Victorian terraced houses within 105 metres of the area blighted by the link road, due to physical factors associated with the link road, was 21%.

23. Mr Connell put forward a number of reasons why he considered this evidence to be unreliable. He pointed out that the individual properties could not be identified from the agents particulars; that those particulars contained asking prices, not sale prices; that the assumption that all properties in these locations were two bedroom houses was not justified, since many properties had been altered or extended; and that the "blighted Wanstead area" would have been blighted by the construction of the link road (as opposed to its use), which had begun in September 1993 and did not itself attract an entitlement to compensation. We agree that, to a greater or lesser extent, each of these factors tends to detract from the reliability of Miss Jenkinson's exercise.

24. Mr Connell also suggested that values in area A (which includes Miss Jenkinson's house) had been adversely affected by rat-running, which was not a problem in the Cowley Road area. The evidence of various claimants, including Ms Harris of 26 Mansfield Road, supported that suggestion. Ms Harris produced a petition signed, among others, by 18 residents of Mansfield Road. It read as follows:

"I, the undersigned believe that following the opening of the M11 link road in August 1999, Mansfield Road has become a rat-run where through coming traffic travels at dangerous speeds, occasioning two serious accidents so far on the bend opposite 26 Mansfield Road, which police and ambulances attended."

25. Mansfield Road has become a rat-run because of the construction of a mini-roundabout at its northern end, at the junction with Eastern Avenue. This allows traffic to turn eastwards onto the link road beyond the tunnelled section and onwards to the A406 at Redbridge roundabout. Miss Dobson of 16 Redbridge Lane West gave evidence on the effect on value of traffic conditions in Mansfield Road. Her property has a return frontage of approximately 100 yards to the eastern side of Mansfield Road at its southern end. She explained that, in addition to suffering from the increased traffic using Mansfield Road, there had been a considerable increase in traffic passing the front of her house in Redbridge Lane West. Prior to the construction of the link road it had not been possible to turn right towards the Redbridge roundabout on the A12 on leaving Redbridge Lane West.

26. Miss Dobson said that she had recently obtained a valuation of her house. This showed that it was now worth significantly less than similar properties set back from the main area of the underpass and protected from “the now secondary route of Mansfield Road”. An example was 3 Draycot Road, which had recently sold for 20% more than the figure at which her own house had been valued. 3 Draycot Road was similar to her own house, but twice as far from Wanstead underground station and not in such good condition. It should therefore have been worth less than Miss Dobson’s house, not more.

27. In our judgment reductions in value due to deteriorating traffic conditions in Mansfield Road or Redbridge Lane West are not a factor entitling the claimants to compensation, because the additional traffic has not arisen on the public works – that is, the link road or its slip roads. On the other hand, if the situation had been reversed, and the effect of the link road had been to convert Mansfield Road from a rat-run to a quiet residential street, that fact would have reduced the compensation payable by virtue of section 6 of the 1973 Act. We have some sympathy with those claimants who suggested that this anomaly was unfair, but we are bound to assess compensation in accordance with the law as it stands, rather than as it might have been.

28. For the reasons given by Mr Connell and referred to in paragraph 23 above, and because it is not possible to isolate the effects of changing traffic conditions in Mansfield Road from Miss Jenkinson’s valuation exercise, we obtain no assistance from that approach. Nor is the suggested 20% plus decline in the value of Miss Dobson’s property – resulting in part at least from increased traffic along Mansfield Road and Redbridge Lane West – relevant to an assessment of the loss suffered purely as a result of physical factors caused by the use of the link road.

29. A common theme of the case put forward by several claimants was that TfL had been inconsistent in its approach to the levels of compensation payable in different areas. For example, Mr Sikking of 10 Felstead Road said that both his street and Selsdon Road were a similar distance from the link road. He, however, had only been offered compensation of 1% of the unblighted value, whereas in Selsdon Road rates varying between 6% and 12% had been agreed. In Woodcote Road, which in parts was further from the link road than Felstead Road, rates between 2% and 10.5% had been agreed.

30. Mr Tompsett responded that it was not appropriate to make a comparison of the noise effects based purely on relative distances from the link road, because this did not take account of the relative degree of screening of the properties, nor the pre-existing situation and the subsequent change in noise levels. Post-scheme noise levels in much of Woodcote Road and Selsdon Road were much higher than at 10 Felstead Road. Many of these properties had suffered very large increases in noise – for example, 2 Selsdon Road had a noise increase of 14dB(A) on the front façade and 12dB(A) on the rear façade. In Woodcote Road, a number of properties had a noise increase of 8 or 9dB(A). By contrast with Selsdon Road, the rear of 10 Felstead Road – that is, the façade closest to the link road – was screened to an extent by a large block of flats, Edgar House, and by the buildings in Blake Hall Road and Seagry Road. Noise levels had been calculated for 14/16 Felstead Road for the 1987 public enquiry and the results showed that readings would rise by a small amount, around 3dB(A), on the rear façade of 10 Felstead Road.

31. Mr Tompsett added that it was necessary to take account of the Green Man roundabout, which was at or above the pre-existing grade, and also the west-bound off-slip road, which rose from within the cutting up to the level of the roundabout. Despite the presence of a 2m high noise barrier, these roads affected Woodcote Road and Selsdon Road, resulting in a greater noise impact from the link road on those roads than on Felstead Road.

32. Acoustics is a sophisticated science. It is perhaps understandable that the claimants have found it difficult to appreciate why considerable differences in levels of compensation have been offered to properties which are a similar distance away from the link road. Nevertheless, having seen and heard Mr Tompsett giving his evidence and in the light of our subsequent site visit, we are entirely satisfied that he is an experienced expert, who prepared and gave his evidence in a careful and impartial manner. We accept his evidence on the noise effects of the link road in its entirety. Insofar as his conclusions have been properly taken into account by Mr Connell, we do not consider that they suggest any marked inconsistency in the treatment of different claimants.

33. The only significant inconsistency that we have detected relates to the treatment of 10 Hardwick Court in area C. The link road is in a deep cutting here as it exits the George Green Tunnel. Mr Tompsett's calculations showed that the noise levels suffered by 10 Hardwick Court had reduced by around 3dB(A). Despite this improvement in the noise situation, Mr Connell had offered compensation of 4.25% of the unaffected value. We have been unable to discern a satisfactory explanation for what seems to us to have been the generous treatment of this property.

34. Several claimants referred to problems of pollution. The two pollutants of most serious concern were nitrogen dioxide (NO₂) and particulate matter of 10 microns or less (PM₁₀) 24-hour mean. Research has shown that these pollutants are, on the whole, generated by road traffic. Measurements taken in 2001 at a monitoring unit in Gardner Close (area D) showed 47.8 microgrammes per cubic metre of nitrogen dioxide and 29.7 microgrammes per cubic metre of particulates. A letter to Mr Harry Cohen, MP dated 10 February 2003 from the office of the Chief Public Protection Officer, London Borough of Redbridge stated:

“Traffic pollution is greatest close to its source but levels drop off rapidly as distance from the road increases and I am confident that the residents of Redbridge are not being exposed to excessive levels of air pollution.

I am aware that in common with most other London boroughs, the air quality adjacent to trunk roads does give cause for concern. The trunk roads in Redbridge are the A12, A406 and M11...”

35. Traffic flows along the Eastern Avenue, measured at a point close to Preston Drive (area D), increased from 25,198 per 24-hour period in 1993 to 75,744 in 2001. It is clear that, at least in locations close to the link road, this significant increase in road traffic will have resulted in increasing levels of pollution. The question we are required to determine, however, is by how much a potential purchaser, fresh to the scene on 4 August 2000, would have reduced his offer to take account of this increase. Mr Connell said that, because of the buoyancy of the residential market at that time, with prices increasing sharply, buyer sensitivity to the physical factors was not as great as it would have been in a seller’s market. He added that, with the exception of Gardner Close, pollution had not been mentioned as a relevant factor by any of the experienced surveyors who discussed compensation with him on behalf of the individual claimants. The onus is on the claimants to justify their contention that the increase in pollution would have reduced the value of their homes on the valuation date. In our judgment that onus has not been discharged.

36. Some of the claimants’ written submissions referred to pollution from artificial lighting on the link road. We accept Mr Connell’s evidence that, in the buoyant market conditions that existed at the valuation date, even if potential purchasers had been aware of an increase in artificial light visible from their properties, this would not have affected their bids.

37. Considerable attention was paid by certain claimants to a remark in one of Mr Connell’s letters, which appeared to suggest that the levels of compensation offered varied, according to whether a new road had been built or an existing road had been improved. Mr Buley submitted that any such difference was immaterial. The question for the Tribunal was the loss of value caused by physical factors emanating from the road on 4 August 2000 compared with the pre-scheme situation. We accept that submission. On the evidence we find that Mr Connell’s valuations have, in fact, been prepared on the basis of the correct comparison.

38. Mr Connell was also criticised for his decision to quote the distance of each property from the main link road and not from the adjacent service road. We think it would probably have been helpful if Mr Connell had provided both measurements. We are satisfied, however, that this deficiency does not mean that his approach to the valuation – using Mr Tompsett’s report, which allowed for the slip roads, as its starting point – was in any way compromised.

39. Several claimants sought to rely on the levels of compensation which had been put forward by surveyors previously instructed to act on their behalf. It was suggested that they were valuations by experienced professionals. For example, Miss Acton referred to the figure of £7,500 which Messrs Lloyd Williams, chartered surveyors, had previously claimed for her

house. A letter to Miss Acton dated 9 February 2005 from Mr Walker of Lloyd Williams included the following remarks:

“Regarding the claim amounts, we did point out in our letter of 6 March 2002 that the claim amount was set high for negotiation purposes.

The 1973 Act has many limitations and the Standing Committee prior to the Act accepted that the surveyor had a very difficult task in quantifying the level of compensation.

We have to look at the worst scenario when quantifying the claim. Possibly due to the innovative road surface our fears about unbearable noise and ground borne vibration did not materialise. It was in your interest to claim high, as if we had underestimated this could have prejudiced your claim.

During negotiation it is difficult to prove diminution in value where there is a buoyant market and Wanstead was one of the hottest spots in the London property market. It was not possible in such a market to prove there was diminution as a result of the Link Road.

Further we were not party to the environmental report until negotiations commenced and this showed there was unlikely to be a noise increase in your vicinity.

As negotiations proceeded it became clear that we did not see eye to eye with Transport for London’s agent on Cambridge Road. At meeting after meeting TfL’s agent would offer no compensation whatsoever on your property. There was some force to his argument in the light of the scientific data and sales evidence. You can appreciate that negotiations can be complex and difficult and thus we never give guarantees on the level of compensation...”

40. Those remarks seem to us to be entirely reasonable. We are satisfied that the figures originally claimed were deliberately high in order to allow a safe margin for negotiation. They were not valuations and we attribute no weight to them.

41. References were made to blight caused to properties during the lengthy progress of the road works, to difficulties of pedestrian access to the other side of the link road, to changes in bus routes and to vibration from underground trains. We do not consider that any of these matters, albeit they have clearly caused inconvenience, are relevant to the valuation question we have to decide under Part 1. Nor do we accept that Mr Connell was placed under any pressure from TfL to minimise payments of compensation. He said, and we accept, that following his own researches and discussions with claimants’ surveyors, he had made recommendations on the level of compensation to TfL which had been accepted without demur. Finally, although the claimants suggested that there had been an element of betterment to Selsdon Road as a result of the construction of the link road, Mr Connell said that this matter had not been raised by any of the surveyors who negotiated compensation in that street and had not been reflected in any of the agreed valuations. We accept that evidence.

TfL's case – conclusions

42. Although, as we have said, we found Mr Tompsett's evidence to be reliable, there are a number of aspects of Mr Connell's evidence which were less than entirely satisfactory.

43. We start with his approach to beacon properties, the basic building block in his valuation exercise. Mr Connell did not inspect the interior of any of the beacon properties. He made adjustments to reflect the physical circumstances of the comparable properties in respect of which sales evidence was available. He made allowances to reflect the existence or absence of central heating, double glazing, extensions, loft conversions, garages, central heating, and whether a property was terraced, end of terrace or semi-detached. Again, all these adjustments were made without the benefit of an internal inspection. No allowance was made to reflect differences in condition, external or internal or whether, for example, bathrooms and kitchens were new or in need of replacement.

44. Moreover, Mr Connell's report suggested that, so far as the nine reference properties in area A were concerned (situated in Mansfield Road, Sydney Road, Redbridge Lane West, Chester Road and Corbett Road), he had relied on only one comparable sale when assessing the beacon property value. That was the sale of 1 Mansfield Road in April 2001. In fact, it emerged that that property had subsequently been re-sold after a very short period for a much higher figure, after it had been converted from flats to a family house. A further weakness of Mr Connell's approach is that it was, to a very large extent, based on settlement evidence. The Tribunal has frequently indicated the need to treat such evidence with caution. The difficulties which claimants generally face in pursuing claims for modest amounts of compensation are increased in the case of Part I claims, where acoustics evidence as well as valuation evidence is often required.

45. All that said, we have come to the conclusion that, with a few limited exceptions, the valuation evidence of Mr Connell may properly be accepted. The reasons for this conclusion are as follows. Firstly, notwithstanding his lack of full information on the sale prices of 1 Mansfield Road, Mr Connell's beacon value of £170,000 for properties in area A appears to us to be reasonable. It was not generally contested by the claimants, although Miss Jenkinson suggested that it was too low. Mr Connell, however, pointed out that his figure was consistent with prices paid for houses in Cowley Road and Halstead Road, which were physically very similar to properties in area A, but located too far away to be affected by the link road. In the light of our external inspections of these properties, we are satisfied that the agreed beacon value for area A is not too low.

46. Secondly, in apportioning identified reductions in value caused by the scheme, Mr Connell has assumed in each case that non-physical factors accounted for only 20% of the total reduction. In the case of the various reference properties which have been badly affected by rat running, this apportionment is in our view extremely generous to the claimants.

47. In our judgment Mr Connell has also treated the claimants favourably by basing his offers of compensation on Mr Tompsett's figures, which assumed a road surface which was noisier than that which was actually installed on the main carriageways.

48. Finally, we formed the view from his demeanour when giving evidence that Mr Connell was a straightforward witness, doing his best to produce fair answers to what were clearly far from straightforward questions. When points were put to him which he had not previously known about or considered, he was readily prepared to increase his valuations if he felt it appropriate to do so in the light of the new information.

49. There are, however, three properties where we consider that a diminution in value has occurred which is greater than that suggested by Mr Connell. The first is 128 Gardner Close in area D. This comprises a fourth floor flat in an eight-storey block built in the 1960s. Mr Connell assessed the compensation for this property at £5,100, equivalent to 5.5% of the unaffected value of £92,500. This depreciation rate was agreed for all the flats at the rear of the building, irrespective of their floor level. In fact, Mr Tompsett's report showed that the noise impact of the link road on this building increased with height. In cross-examination Mr Connell suggested that a uniform percentage had been adopted because Gardner Close was the only building where pollution had been mentioned by the claimants' surveyors. It had been agreed that the effects of pollution reduced with height above ground level, offsetting the increase in noise. While we accept that pollution was raised by claimants' agents in the course of negotiations on Gardner Close, we are not persuaded that the reduction in pollution fully outweighs the increase in noise. We inspected the property internally and noted evidence of dust accumulation in what was clearly a well cared for residence. We consider it appropriate to increase the depreciation rate to 6.5%, producing a compensation figure of £6,012, say £6,000.

50. Secondly, we refer to Nadir Court, a block of flats in area B fronting the west side of Blake Hall Road, immediately south of its junction with Selsdon Road. Flat 6 comprises a second (top) floor flat built approximately 40 years ago. The accommodation consists of two bedrooms, lounge, kitchen, bathroom and wc. Mr Connell's final suggested figure for compensation was £3,900, representing 3% of an unaffected value of £130,400. Mrs Henman submitted that the degree of diminution in value was similar to the 6 per cent agreed to be suffered by 33 Selsdon Road, a detached house whose garden immediately abuts the rear garden of Nadir Court and which is only slightly closer to the link road.

51. Flat 6 has three windows at the rear, facing towards Selsdon Road and the link road, and two windows fronting Blake Hall Road. Mr Connell considered that the effect of noise from the link road was greater on 33 Selsdon Road because, unlike at flat 6, it was not drowned out by noise from the heavy traffic travelling along Blake Hall Road. Mrs Henman, on the other hand, said that the effect of physical factors caused by the use of the link road on her flat was greater than on No.33, which was situated at a lower level; it was possible to see a gantry and lights in the distance from the rear windows of her flat.

52. In the light of our inspection, we are satisfied that the effect of noise from the link road on No.33 was significantly greater than on Flat 6, because Nadir Court helps to screen No.33 from the traffic noise along Blake Hall Road. It does not screen it entirely, however.

Moreover, of the five windows in flat 6, only two directly front on to Blake Hall Road. We find that the unaffected value of flat 6 has been reduced by 4.25%. The compensation payable is therefore £5,550, as follows:-

$$£130,400 \times 4.25\% = £5,542, \text{ say } £5,550.$$

53. The third property which we consider justifies a larger allowance than that proposed by Mr Connell is 22 Addison Road, a two-storey terraced house in area C. Mr Connell's original assessment of compensation for this property was £2,000, equivalent to approximately one per cent of an unaffected value of £202,000. In answer to a question from the Tribunal, he said that he had in fact offered to increase the compensation to £2,500, based on a diminution of 1.25%, but this information had apparently not been passed on to Mr and Mrs Wilding. He also agreed that the four comparables he had produced suggested an unaffected value of £208,000 rather than £202,000, but he did not volunteer a further increase in compensation to reflect this. In our judgment it is appropriate to use the figure of £208,000 as the starting point and to apply a diminution factor of 1.5 per cent. This is 0.25 per cent less than the figure agreed for the adjoining property, No.20, which in turn was settled at 0.25 per cent less than No.18. The compensation payable for No.22 is therefore 1.5% of £208,000, or £3,120, say £3,100.

54. We therefore determine that the amounts of compensation payable in respect of each of the reference properties are as follows:-

| | |
|------------------------|--------|
| 60 Mansfield Road | £4,750 |
| 50 Mansfield Road | £2,450 |
| 10 Corbett Road | £4,300 |
| 128 Gardner Close | £6,000 |
| 6 Nadir Court | £5,550 |
| 22 Addison Road | £3,100 |
| 13 Sydney Road | £1,700 |
| 26b Cambridge Road | £500 |
| 26 Mansfield Road | Nil |
| 6 Chester Road | Nil |
| 11 Sydney Road | £1,600 |
| 16 Redbridge Lane West | Nil |
| 10 Felstead Road | £4,100 |
| 10 Hardwick Court | £5,750 |
| 8 Corbett Road | £4,050 |
| 28 Preston Drive | £4,400 |

55. We would add this. After these references had been made, Cllr Burgess asked TfL for details of the percentage reductions which had been agreed for certain properties which he regarded as providing comparable evidence. His request was refused on the grounds that the disclosure of such information

“would breach one or more of the principles set out in the Data Protection Act 1998 (and be an unfair intrusion into the private lives of those individuals concerned).”

56. At a pre-trial review held on 4 January 2008, Cllr Burgess asked the Tribunal to order TfL to produce this information. We declined to do so immediately, but we expressed some surprise at TfL’s reliance on the Data Protection Act. We invited TfL to reconsider the position and they subsequently agreed to supply all the details that had been requested.

57. Mr Connell made it clear that it had not been his idea to refuse to disclose this information, to which he had of course had regard when preparing his expert report. We make no criticism of him, or of TfL, who were presumably acting on legal advice. In our view, however, the correct procedure to be adopted by a compensating authority, faced with a reference to the Lands Tribunal and a similar request for information, if it has a genuine concern about disclosing previous settlements, is to approach the claimants in question and seek their consent to such disclosure. If any objections are raised, an interlocutory application to the Tribunal should then be made.

58. It was clear that there was a feeling among some of the claimants that TfL had behaved improperly in assessing their compensation. We consider such concerns to have been unfounded. If, however, TfL had adopted a more open approach to the disclosure of evidence which was clearly relevant to the matters in dispute, it is at least possible that these claims would have been compromised without the need for a lengthy formal hearing.

59. It has been agreed that each party will be responsible for its own costs. We therefore make no order as to costs.

Dated 6 August 2008

P R Francis FRICS

N J Rose FRICS