UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2016] UKUT 126 (LC)
Case No: LCA/139/2013 (Consolidated)

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Land Compensation Act 1973 Part I – dwelling houses – depreciation in value from physical factors caused by the Coulsdon Relief Road – relevance of noise evidence – valuation evidence based upon transactions and agreed values – transactions preferred – compensation determined at 1% and 4% of agreed switched off values.

IN THE MATTER OF 12 NOTICES OF REFERENCE

BETWEEN:

MARK GOODMAN AND CARLY GOODMAN (1)
KEITH MURRAY (2)
ROSINA BARRETT (3) **Claimants**
JEANETTE ALLAN (4)
MEHRDAD KAMALI (5)
SUSAN JONES (6)
STUART McGEEKIE AND PATRICIA McGEEKIE (7)
DINAH KRAEMER (8)
MARIA PETERS (9)
NEIL HAMMOND (10)
JOHN PRESCOTT (11)
ARUN BAJAJ AND PINKY BAJAJ (12)

- and -

TRANSPORT FOR LONDON **Responsible Authority**

Re: Properties at Brighton Road, Cordrey Gardens and Deepfield Way, Coulsdon

P D McCrea FRICS

James Burton, instructed by Hugh James, for the Claimants
Robert Walton, instructed by TfL, for the Responsible Authority

Hearing dates: 25 – 29 January 2016

Royal Courts of Justice, London, WC2A 2LL

The following cases are referred to in this decision:

King and others v Dorset County Council [1997] 1 EGLR 245
Delaforce v Evans and Evans (1970) 22 P&CR 770
Wolff v Transport for London [2008] RVR 316

The following cases were referred to in argument:

Blower v Suffolk County Council [1994] 2 EGLR 204
Lewicki v Nuneaton & Bedworth BC [2013] UKUT 0120 (LC)
Livesey v Lancashire County Council [2014] UKUT 0501 (LC)
Robertson v Manchester Airport [2010] UKUT 0370 (LC)
Williamson and another v Cumbria County Council (1994) 2 EGLR 206

DECISION

Introduction

1. This consolidated reference relates to claims for compensation under Part I of the Land Compensation Act 1973 ("the Act") by various claimants in the town of Coulsdon, part of the London Borough of Croydon[1]. The responsible authority under the Act is Transport for London.

2. The public works (also referred to as "the relief road"), the use of which gives rise to claims for compensation for depreciation in value of the claimants' interests, comprise the Coulsdon Inner Relief Road, the purpose of which was to relieve congestion on the A23, by by-passing Coulsdon Town Centre. The main construction of the relief road started in January 2004, and was certified as completed on 18 December 2006, which is the relevant date under the Act. The first claim day, and therefore the valuation date, is 19 December 2007.

3. 19 references were originally made to the Tribunal, but following settlements and withdrawals 12 remained live at the date of the hearing. The claimants and their claim properties are as follows: on Brighton Road, Mr Mark and Mrs Carly Goodman (No. 79); on Cordrey Gardens, Mr Keith Murray (No. 22), Mrs Rosina Barrett (No. 51), Mrs Jeannette Allan (No. 53), Mr Mehrdad Kamali (No. 55), Ms Susan Jones (No. 56), Mr Stuart and Mrs Patricia McGeekie (No. 59), Ms Dinah Kraemer (No. 61), Ms Maria Peters (No. 66), Mr Neil Hammond (No. 67), and Mr John Prescott (No. 68); and on Deepfield Way, Mr Arun and Mrs Pinky Bajaj (No. 76).

4. Mr James Burton of counsel appeared for all 15 claimants, ten of whom gave oral evidence, the exception being Mrs Allan, Ms Kraemer, Mrs Goodman, Mrs McGeekie and Mrs Bajaj. In addition, Mr Burton called expert evidence in relation to noise from Mr Colin English BSc CEng HonFIOA, and expert valuation evidence from Ms Penelope Veness FRICS.

5. Counsel for the responsible authority, Mr Robert Walton, called Mr Adam Lawrence BEng(Hons) CEng MIOA to give expert evidence in relation to noise and Mr Richard Pugh BSc(Hons) MRICS to give expert valuation evidence.

6. I am grateful to both Counsel for their assistance throughout, illuminating technical evidence that might otherwise have been verging on impenetrable.

7. During the late afternoon of 12 January 2016, commencing at dusk and ending in full darkness, I carried out internal inspections of 79 Brighton Road, 55 and 59 Cordrey Gardens and 76 Deepfield Way, and external inspections of the remaining claim properties, and those upon which claims have been settled. I was accompanied by Ms Veness and Mr Pugh.

[1] Until the 1974 local government reorganisation, Coulsdon formed part of Surrey, and many residents still use a Surrey postal address.

Facts

8. Having regard to a statement of agreed facts and issues, the evidence and my inspection, I find the following facts.

9. The public works are in the town of Coulsdon in the London Borough of Croydon. Coulsdon has good transport links to London and the coast. For vehicular traffic the main transport link is the A23. There are also three railway lines: a local line carrying stopping-only services (the Tattenham Corner line, passing through Coulsdon Town Station, which was previously known as Smitham Station) and two lines carrying a mixture of freight, faster and stopping services, known as the "Redhill" and "Quarry" lines, which also operate during the night. Nearly 600 trains use these rail lines over a 24-hour period.

10. The purpose of the public works was to relieve congestion on the A23 by by-passing Coulsdon Town Centre, whilst leaving the old Brighton Road intact for local use.

11. Prior to the public works the A23 Brighton Road ran north-east/south-west through Coulsdon Town Centre. Brighton bound, its route took it south, southwest from Coulsdon Methodist Church, under the Tattenham Corner railway line, under the railway near Coulsdon South Railway Station, to its junction with Woodplace Lane. Windermere Road was parallel to part of the Brighton Road, north east of the town centre. In an attempt to reduce its use as a "rat run", it was made "no entry" at its northern end in June 1990. As part of the works, Windermere Road was severed at its southern end and a turning head was created.

12. In preparation for the start of construction of the relief road in January 2004 a number of buildings were demolished. These demolitions occurred in two phases. Initially a petrol station at the junction of Windermere Road and Brighton Road was demolished in 1995. Further buildings were demolished in April 2003, comprising 12 houses and a number of commercial and industrial buildings.

13. By reason of the public works, the A23 now abandons the old Brighton Road and proceeds along a new highway known as Farthing Way, by-passing Coulsdon Town Centre. Brighton bound the new route now runs almost due south once past Coulsdon Methodist Church, directly under Coulsdon Town Railway Station then south, south west alongside and parallel to the Redhill and Quarry Railway lines, before re-joining the old Brighton Road south of Coulsdon South Railway Station. Farthing Way is in a cutting as it passes under the Tattenham Corner Railway line, then emerges as a dual and single carriageway.

14. The new road opened for traffic on 18 December 2006.

15. Mr and Mrs Goodman's property is on Brighton Road, north east of the town centre. It is not on the relief road, but is close to it. To the south-west of their property, a short distance away, the public works altered the section of the Brighton Road by the Coulsdon Methodist Church, by providing a signal controlled junction there, creating a turning head at the now closed

southern end of Windermere Road and by introducing associated lighting columns, some of which are visible from number 79.

16. All of the other claim properties are in an elevated location, to the south east of the town centre, known as Coulsdon Woods. With the exception of one on Deepfield Way, they are all on Cordrey Gardens. The pre and post-relief road distances of individual properties are outlined later, but on average the old Brighton Road lay something in the order of 330 metres away from the Coulsdon Woods properties, with shops and other buildings between these properties and the road, which ran through the town centre. Following the works, the new relief road is closer to Coulsdon Woods, at an average of around 150 metres, and runs parallel to the main rail lines.

Statutory Provisions

17. 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):

> "1.- **Right to compensation**
>
> (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) ….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."

18. Section 2 deals with the types of interest which qualify for compensation. It is agreed that at the relevant date, all of the claimants had qualifying interests. Sections 3, 4 and 16 deal with claims, the assessment of compensation, and referrals to the Tribunal.

"**3. - Claims**

(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'*."

"**4. - Assessment of compensation: general provisions**

(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.

….

(4) The value of the interest in respect of which the claim is made shall be assessed—

(a) subject to subsection (5) below, by reference to the nature of the interest and the condition of the land as it subsisted on the date of service of notice of the claim;

(b) subject to section 5 below, in accordance with rules (2) to (4) of the rules set out in section 5 of the Land Compensation Act 1961;

(c)if the interest is subject to a mortgage or to a contract of sale or to a contract made after the relevant date for the grant of a tenancy, as if it were not subject to the mortgage or contract.

(5) In assessing the value of the interest in respect of which the claim is made there shall be left out of account any part of that value which is attributable to—

(a) any building, or improvement or extension of a building, on the land if the building or, as the case may be, the building as improved or extended, was first occupied after the relevant date; and

(b) any change in the use of the land made after that date."

> **"16 – Disputes**
>
> (1) Any question of disputed compensation under this Part of the Act shall be referred to and determined by the Upper Tribunal.
>
> (2) No such question arising out of a claim made before the first claim day shall be referred to the Tribunal before that day."

19. Of the valuation rules referred to above, set out in Section 5 of the Land Compensation Act 1961, only Rule 2 is relevant to these references, which states that:

> "The value of land shall, subject to as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise…"

Issues

20. The dispute between the parties is in respect of the extent, if any, to which the value of the claim properties as at 19 December 2007 had depreciated owing to the physical factors caused by the use of the relief road.

21. In very broad summary, TfL does not dispute that road noise caused by the use of the relief road has increased significantly, but says that the overall noise level at the claim properties (including rail noise) has not increased to the extent that most people would find problematic, as shown by published guidance. The claimants do not dispute that there is and always has been noise from trains, but say that the road noise caused by the relief road has increased significantly to "fill the gaps" between train noise, and that the character of the road noise has changed, which has had an effect on the value of their properties. Some claimants also say that their properties have been affected by vibration, dust, and artificial lighting.

22. Many of the claimants also referred to noise and disruption arising from the *construction* of the relief road, but it is important to note that it is the physical factors in respect of the *use* of the relief road, and not its construction, that are relevant. All construction and the disturbance associated with it had, necessarily, ceased by the valuation date one year after the road came into use.

23. It is common ground that an assessment of whether there has been any depreciation in the value of each property can be made by comparing its open market value at the valuation date on two bases: its value with the relief road in full use, and secondly its value on a "switched off" basis. This "switched off" basis assumes that the relief road is complete and in use but that no physical factors are being generated by its use i.e. that vehicles on the road are silent and emit no Part I factors such as noise, dust, vibration, and artificial light; and that lamp standards are present but are not illuminated. The switched off values also reflect the presence of pre-existing features, including the existing railway lines and the noise from the train services on them. The valuation experts have agreed "switched off" values for each claim property

24. In order to decide whether there has been any depreciation in value, the evidence can be split into two groups. The first group is evidence in respect of noise, vibration, fumes, lighting and dust, with evidence from the noise experts forming the largest element of that group. The second part is valuation evidence, including settlement evidence, comparable transactions, and the use of house price indices.

25. Whilst substantial noise evidence was given, I have not found it necessary to make a definitive detailed judgement on each aspect of the noise experts' opinions. It is common ground that noise evidence can only inform valuation evidence. Both valuation experts, whilst having some regard to the noise evidence, nevertheless formed their own impressions of the level of noise at the claim properties, and relied upon comparable evidence in order to form a judgement as to the depreciation in value.

26. For the claimants, Ms Veness says that there has been a 5% depreciation in the value of the elevated properties, and a 1% depreciation in the value of 79 Brighton Road, rounded to £3,000.

27. Mr Pugh, for TfL, does not consider that any of the claim properties have suffered a depreciation in value arising out of the physical factors caused by the use of the relief road.

Evidence of the Claimants

Brighton Road

28. Mr and Mrs Goodman's property, at 79 Brighton Road, is on part of the original route of the A23, close to its junction with the relief road. Prior to the relief road, Mr Goodman said that Brighton Road was a single carriageway in each direction. The road could be busy, in rush hour for instance, but there was generally a flow of traffic and as there were no traffic lights, traffic did not tend to stop. At night, the road was relatively quiet.

29. His evidence was that upon the relief road opening, there was an immediate effect on the traffic, the number of vehicles increased, as did the noise created. The relief road is now very busy, with traffic often "bumper to bumper". There are a number of traffic lights, causing traffic to be held up outside the Goodmans' property. The noise is particularly noticeable when lorries pass the house; they make a horrendous noise when dropping through gears in an attempt to stop at the traffic lights and then pulling away in low gears. As a result of the increased noise, Mr and Mrs Goodman fitted new double glazing, but they are still disturbed at night, and are unable to have any windows open owing to road noise. When spending time in their garden, the Goodmans can hear background noise which they have learned to live with, and only find motorbikes or lorries to be bothersome. They experience vibration as a result of HGV's braking and coming to a halt outside their house. Cracks have appeared around the property which Mr Goodman deals with approximately once a year. Mr Goodman said that he and his wife are also affected by new street lighting which is brighter than the previous lighting.

Cordrey Gardens

30. Each of the claimants who live in Cordrey Gardens gave very similar evidence. They were Mr Murray, Mrs Barrett, Mr Kamali, Mrs Jones, Mr McGeekie, Ms Peters, Mr Hammond and Mr Prescott. The evidence of Mrs Barrett, Mr Kamali and Ms Peters is representative of its effect.

31. Mrs Barrett said that when she and her husband moved into 51 Cordrey Gardens in 1998, they became aware of train noise, but this came and went quite quickly. She was only woken up at night on infrequent occasions. Since then, she thought that the number of trains through the night has decreased. During the day, train noise was not causing a problem, and she happily had her windows open. In general terms, before the relief road opened, her property was in a peaceful situation, and she experienced hardly any noise.

32. She said that the new road was much closer to her property. As soon as it opened it was a busy road, with rush hour traffic. Over the years the road has got busier, in constant use, and is hardly ever empty. When the road opened, Mrs Barrett and her husband heard a lot of traffic noise that they had never experienced before. At night, she has to have her bedroom window closed in order to get to sleep, which is uncomfortable. Even with the window closed, she is woken by the occasional motorbike or heavy goods vehicle. During the day, the road noise does not bother her so much. There is always a background traffic noise, but she has learnt to live with it. The only time it is problematic is when a motorbike, heavy goods vehicle or vehicle with a siren passes.

33. Mr Kamali said that when he purchased 55 Cordrey Gardens in November 1996 it was in a quiet cul-de-sac. The old Brighton Road was located some distance from his property and he did not experience any noise. The railway lines are closer to his property but he had never had a problem with noise from the trains. Over the years the trains had become quieter. The trains mostly seem to run every half hour, sometimes every 15 minutes, however the noise comes and goes quickly for only a few seconds and his family are not disturbed by them. He thought that trains did not run through the night.

34. Mr Kamali said that following the opening of the relief road, there is a constant general traffic noise whether traffic is flowing or at a standstill. The loudest noise comes from emergency vehicles, lorries and motorbikes. There is a motorbike showroom at the top end of Brighton Road and Mr Kamali believes that they use the relief road for customers to test ride bikes. At night, noise from traffic often keeps Mr and Mrs Kamali awake, even with windows and curtains shut. The relief road has also affected how his family use their garden. Owing to noise and concerns of the fumes, he now takes his daughter away from the property to play in the park. His family used to have barbecues and sit outside, but they do less now because of the effects of the relief road. He said that there was a bottleneck effect from northbound traffic which left his property faced with heavy traffic throughout the day.

35. Ms Peters said that before the relief road opened she did not experience noise of any great description other than noise from passing trains which, she said, "make their noise as you would expect, but they have come and gone quite quickly and they are few and far between".

36. Now that the relief road has opened, she said there is constant traffic noise. In the summer, noise is a primary issue and she is not able to open the windows. She had carried out work to her garden in order to make it flat by installing decking but was not able to enjoy it in the summer because noise from the relief road precluded sitting outside. She also noticed noise from the road at night and again in summer months had to close her window on a number of occasions because of traffic noise disturbing her. She bought her property in July 2006 for £269,950. In June 2012 when she re-mortgaged, her property was valued independently at £300,000.

37. Mrs Kraemer did not attend the hearing. In her witness statement, she said (uniquely among the claimants) that before the relief road was constructed, the train noise from the Gatwick Express trains was "very noisy". However, the trains had, over the years, become quieter. Once the relief road opened, there was an immediate increase in the level of road noise. The noise is a general hum of traffic, and at night there is noise from heavy goods vehicles and sirens from emergency vehicles. In general terms she tolerates the noise, but her house is no longer as peaceful as it was before the relief road opened.

38. Mrs Allan did not attend the hearing. Her witness statement indicated that she purchased 53 Cordrey Gardens in 2000 for £110,000. Owing to her health deteriorating, she decided to put the property on the market in 2009. She instructed Choices Estate Agents to market the property at £199,950 in Summer 2009[2]. She said that there were at least a dozen viewings, with most if not all viewers saying that they liked the property but were concerned about the road noise, and would ask questions about it. Feedback through the agents indicated that noise was a common concern. In November 2009 she reduced the asking price to £189,950, and instructed a number of agents to advertise the property at that level. The property was sold, after some negotiation, in May 2010 at £186,000. The purchasers, she said, only viewed the property once, and made a passing comment about the road and enquired about noise.

Deepfield Way

Mr Bajaj, of 76 Deepfield Way, said that before the relief road was built, he might have heard railway noise every now and then, but that this did not bother him that much. There was a rare noise from the industrial estate. There was train noise, but he got used to that. When the road opened, he could immediately detect an increase in traffic noise, especially

[2] A letter from Choices that was submitted in evidence indicated that the property was marketed by them on 28 October 2008, and withdrawn from the market on 28 January 2009

in the summer time. Now, he can hear a background humming noise of traffic, with heavy lorries passing by. He cannot hear noise from the traffic lights, as they are too quiet and too far away. He can hear noise from motorbikes and lorries. At night, the noise from the relief road wakes him up occasionally, although passes quite quickly. In the summertime, when he wants to leave his windows open, the noise from the road is annoying, particularly from motorbikes. With his double-glazed windows closed, he cannot hear the noise. When in his garden, he finds the noise upsetting. Mr Bajaj said that the train noise doesn't bother him. Finally, he said that the light from vehicle headlights from the junction into the industrial estate did annoy him, although said that he didn't draw his curtains.

Expert Evidence - Noise

39. Both acoustics experts are highly qualified in their field. Mr English is a Chartered Engineer, an Honorary Fellow and Past President of the Institute of Acoustics, and Past Vice President of the European Acoustics Association. He spent 14 years with Ove Arup, and now practises as an acoustic consultant specialising in environmental noise. He was responsible for the acoustic assessment and design of many motorway widening and trunk road schemes throughout the country. Mr Lawrence is a Chartered Engineer and a corporate member of the Institute of Acoustics. He is an associate acoustician and has been employed by Atkins since 1996. He also has substantial experience in the assessment of road schemes throughout the country.

40. To supplement their substantial written reports (comprising some 800 pages including appendices), Mr English and Mr Lawrence gave oral evidence for nearly eight hours over two days of the hearing. I do not repeat that extensive evidence in anything approaching the level of detail in which it was presented, for several reasons. First, the degree of common ground increased before and during the hearing, to the extent that differences between the experts narrowed considerably. Secondly, it is unnecessary to do so in order to understand my decision on the depreciation in value of the claim properties on the statutory basis.

41. The following elements formed common ground between the noise experts.

42. Noise, or unwanted sound, is measured in decibels (d(B))[3] on a logarithmic scale, from zero d(B), being the threshold of hearing, to about 120 to 140 d(B), considered to be the threshold of pain. However, owing to the human ear being more sensitive to mid-range sound than that of higher or lower frequencies, d(B) units are "A-weighted", to better reflect how the ear hears sound. This A-weighted scale is referred to as d(B) L_A. Since the scale is not linear, a change of 10d(B) approximates to a subjective impression of a doubling (or halving) of loudness. But a d(B) L_A scale only gives sound levels at a specific instant, and it is therefore necessary to develop a means of describing noise over a given time period. The L_{A10} Index was developed, which reflects the A-weighted noise level exceeded for 10% of a specified time period. There

[3] Various notations were used throughout the evidence, including d(B)A, $d(B)_A$, or dB(A). I have adopted the notation as used in the various elements of the evidence, but my understanding is that nothing turns on the difference.

are some other indices. An L_{A90} index measures the "troughs", or measures how quiet a location is. An L_{Amax} index measures the highest measurement of sound energy at a location.

43. The noise experts agreed that the railway noise has not changed as a result of the relief road, it has reduced slightly over time as a result of a change to quieter engines. They also agreed that railway noise is audible at each of the claim properties.

44. There are several publications which provide guidance as to the impact of noise from infrastructure projects and which could be used as tools in considering noise.

45. The Calculation of Road Traffic Noise (CRTN) method was developed from 1975 to assess eligibility for noise insulation as a result of infrastructure schemes. It was updated in 1988, and subsequently adopted by the Highways Agency for reporting purposes in respect of Environmental Assessments of road schemes. It is still in use today, and measures road traffic noise over an 18-hour period between 06.00 and 24.00 hrs, with an index notation of $L_{A10,18hr}$. More recently, the Calculation of Railway Noise (CRN) method was developed to carry out a similar exercise, and is measured in $L_{A\,eq}$ values.

46. The Highways Agency provides further guidance in its "Design Manual for Roads and Bridges" ("DMRB"). This adopts the CRTN method, and states:

> "A change in road traffic noise of 1 dB $_{LA10,18h}$ in the short term (e.g. when a project is opened) is the smallest that is considered perceptible. In the long term (typically 15 years after project opening), a 3 dB $L_{A10,18h}$ change is considered perceptible. The magnitude of impact should, therefore, be considered different in the short term and long term. The classification of magnitude of impacts to be used for traffic noise is given in Table 3.1 (short term) and Table 3.2 (long term).

Noise change, $_{LA10,18h}$	Magnitude of Impact
0	No change
0.1 – 0.9	Negligible
1 – 2.9	Minor
3 – 4.9	Moderate
5+	Major

Table 3.1 – Classification of Magnitude of Noise Impacts in the Short Term

Noise change, $_{LA10,18h}$	Magnitude of Impact
0	No change
0.1 – 2.9	Negligible
3 – 4.9	Minor

5 – 9.9	Moderate
10+	Major

Table 3.2 – Classification of Magnitude of Noise Impacts in the Long Term"

47. The parties agree that it is the short-term impact assessment table that is relevant to the subject claims.

48. Two documents might provide assistance in considering community response to noise. When considering a combination of road and rail noise, advice can be gained from the Department for Transport's "Transport Analysis Guidance" ("TAG"). Within the TAG, the measure of annoyance from road noise comes directly from the DMRB document, and describes the proportion of the UK population who are bothered "quite a lot" or "very much" by traffic noise. There is no similar UK guidance for annoyance from railway noise, but the TAG provides an annoyance response relationship. It says that there is zero difference in annoyance between the two noise sources at noise levels of 55d(B) L_{Aeq}. At higher noise levels, of 70 d(B) L_{Aeq}, there is a differential of 6d(B), with fewer people being annoyed by rail noise.

49. More general guidance can be found in the World Health Organisation's ("WHO") "Guidelines for Community Noise" document. This indicated that "during daytime, few people are highly annoyed at L_{Aeq} levels below 55 dB(A), and few are moderately annoyed at L_{Aeq} levels below 50 dB(A)".

50. A large part of Mr English's first report was taken up in analysing previous noise surveys carried out by Mr Lawrence's firm, Atkins, in 2009 and 2010. However, when he became aware of Mr Lawrence's report of October 2014, which contained more recent data modelling and analysis, a large degree of common ground was found. Accordingly, the evidence for the claimants from Mr English consisted largely of an analysis of Mr Lawrence's modelling exercise.

51. In a "Technical Note" (in effect a noise experts' statement of agreed facts and issues), the experts were able to agree that Mr Lawrence's 2014 report provided the best available calculations for assessing $L_{A10\ 18hr}$ traffic noise levels for situations with and without the relief road. They also agreed that the noise screening effects of the demolished petrol filling station would not be significant, and they calculated noise screening changes from the demolition of other properties.

52. In my judgement the noise experts could have gone much further in providing an extended agreed statement of facts and issues, which might have resulted in considerably less oral evidence being necessary. In the end, the issues between them were relatively few.

53. There was common ground that the method of converting $L_{A10\ 18hr}$ data to $L_{Aeq\ 18\ hr}$ data was an adjustment of 2.5dB(A) – as recommended in the 2006 TAG.[4] The effect of this was that, whilst disappointingly not stated in any agreed statement of facts, the $L_{A10\ 18hr}$ data and the $L_{Aeq\ 18hr}$ data was agreed – the only substantial dispute was as regards which was more appropriate, and the conclusions that could be drawn from each method based on other guides.

54. Owing to the way in which the experts' evidence unfolded, it is convenient to outline Mr Lawrence's before that of Mr English.

Mr Lawrence

55. Mr Lawrence said that for the majority of rail lines in the UK, the proportion of trains which pass by a trackside location was insufficient to have an effect on a L_{A10} noise index, since trains were passing by for less than 10% of the time. He said that railway noise was assessed using a $L_{Aeq,\ 18hr}$ index, which represents the equivalent continuous noise level and is a measure of the total acoustic energy over the period.

56. Mr Lawrence said that there was no standard definition for changes in railway noise, but the environmental assessment for the proposed HS2 used a similar method to the road noise tables in the DMRB document, allowing a similar table to be used:

Noise change $L_{Aeq\ 18h}$	Magnitude in short term	Magnitude in long term
0	No change	No change
0.1-0.9	Negligible	Negligible
1 – 2.9	Minor	Negligible
3 – 4.9	Moderate	Minor
5 – 9.9	Major	Moderate
10+	Major	Major

57. Mr Lawrence's view was that in order to consider the change in noise at the claim properties as a result of the use of the relief road, it is necessary to consider the combined effect of both road and rail noise on each property. In doing so, he said that the table above could be used.

58. Mr Lawrence then considered how a community would react to noise. He relied upon the TAG and the more general advice issued by the WHO. Based on this guidance and the modelled L_{Aeq} data, Mr Lawrence concluded that in respect of 79 Brighton Road, the changes in overall noise have been minor or negligible, resulting in small or negligible changes in annoyance.

[4] Both experts accepted that in the latest 2015 document, the recommendation had changed to a 2 dB(A) differential and that $L_{Aeq\ 16\ hr}$ was preferred, but that has no bearing on this decision.

59. In respect of the properties at Cordrey Gardens and Deepfield Way, Mr Lawrence said that, overall, there had been minor increases in noise at the majority of locations, the proportion of people which would be annoyed by road traffic noise with the relief road in place is the same as that which would be annoyed by railway noise, and the overall changes in the level of annoyance is small. He did, however, also conclude that, in respect of Cordrey Gardens and Deepfield Way:

> "prior to the scheme, noise levels at these properties were generally dominated by rail noise. The scheme moved the A23 closer to these properties resulting in a significant and clearly noticeable increase in road traffic noise such that the levels of road traffic noise with the scheme is similar to that of railway noise."

60. In the Appendix to this decision, I have outlined a table showing each of the claim properties, with the agreed change in noise depending upon which method is used. In summary, should Mr English's view be preferred, i.e. that it is only the change in $L_{A10\ 18hr}$ road noise which should be considered, then the majority of the claim properties (with the exception of 79 Brighton Road, at which there was a minor increase) suffered major or moderate increases in road noise. On the other hand, should Mr Lawrence be correct, so that the combined road and rail noise should be compared, the majority of claim properties suffered minor or negligible increases in overall noise, with the exception of 22, 51 and 53 Cordrey Gardens where there was a major or moderate increase to some elevations.

Mr English

61. Mr English stressed that whilst the $L_{A\ 10}$ index can be useful, it bore little relation to what the average person actually hears. The $L_{A\ 10}$ is an average index whereas the human ear hears peaks and troughs and fluctuations in traffic noise. He said that the average layperson does not recognise the concept of an average noise. Some sounds command more attention than others, for example emergency vehicle sirens are specifically designed to be attention drawing but may have the same noise level as another, less noticeable, noise source.

62. Mr English said that the DMRB document was applicable to major road schemes, but accepted that it was not unreasonable to adopt it for a scheme such as the relief road. It sets out the guidance which highways authorities require consultants to adopt in carrying out environmental assessments of schemes, of which noise was one of many.

63. He did not consider it appropriate to have regard to the contribution of railway noise for two reasons. First, the level of railway noise had not changed, and accordingly any effect on value that railway noise had on the claim properties had already been accounted for in the pre-relief road values. Secondly, the nature of railway noise is very different from the noise of the use of the relief road by traffic, and cannot mask the change of noise at the appeal properties. He pointed to the background noise at the properties (the L_{A90} figures), which had increased from an average of around 45db(A) to around 55db(A) which, he said, was consistent with the claimants' subjective impressions of a large increase in noise

owing to the use of the relief road. This increase in background noise, Mr English said, was not reflected in a combined L_{A10} and L_{Aeq} set of data.

64. In cross-examination, Mr Walton put to Mr English the inclusion of a L_{Aeq} in the September 1992 Environmental Statement for the relief road as being a more realistic method than L_{A10} where there were other noise sources, eg aircraft or train noise. Mr English said that this was appropriate for a "broad brush" scheme-wide assessment, and was appropriate for the assessment of the effect of noise on individual properties in the context of an Environmental Statement, but was not appropriate for the assessment of the impact on claim properties under Part 1 of the Act, as the data was not representative of what the hypothetical purchaser would actually hear.

65. In respect of the WHO guidelines, Mr English said that they were concerned with long term community health effects expressed in annual average daily levels. However, even if he put aside his reservations and applied the WHO guidelines to the claim properties, it would show that for most of the elevated properties, the noise levels had increased to the extent that more people would be highly annoyed, and most would be moderately annoyed. The TAG guidance, he said, only reported the correlation of noise and effects but not the causation of effects. He pointed to the fact that the tables in the TAG document indicated higher monetary effect values from changes to road noise than for rail noise. He did not consider that these documents described the potential effect on decision making of a hypothetical purchaser who would only experience the noise at the property for relatively short periods of time.

Noise evidence - conclusions

66. Having read copious written evidence and heard extensive oral evidence and submissions on the subject of noise, I do not find myself significantly further forward in my deliberations as to the depreciation in value of the claim properties on the statutory assumptions.

67. In *King v Dorset County Council* [1997] 1 EGLR 245, the Tribunal (Judge Marder QC, President) said this:

> "As in other claims made under Part 1, I heard a great deal of evidence from acoustics experts upon the subject of noise measurement. For these claimants, as indeed is likely for most claimants in respect of a new road or new road pattern, the additional noise generated by extra traffic is the most important of the physical factors underlying the claim. It should not be thought that the Tribunal will disregard expert technical evidence from acoustics specialists as unimportant or irrelevant. Nevertheless, it should be borne in mind that the task of the Tribunal is to determine the depreciation (if any) of the value of the claimant's interest. That is a matter for the market, and as [counsel for the claimant] observed, the bidder in a residential market does not have an acoustics expert, nor even a noise meter, at his elbow when making his bid."

68. I adopt those sentiments. That is not to denigrate the work of the noise experts. Mr Lawrence, especially, carried out a significant amount of data modelling and analysis. However, as I observed at the hearing, the evidence in respect of noise is secondary to that of valuation.

69. The evidence of the claimants themselves was persuasive and largely consistent. They (and to an extent Ms Veness) were able to provide first-hand accounts of the increase in noise levels as a result of the physical factors of the relief road. In many instances this amounted to what, in L_{A10} terms, would be perceived to be a doubling of noise, and to which the DMRB document would describe as having a major impact. I accept their evidence.

70. Mr Lawrence accepted that his combined method was not recommended in any of the guidance material, and that his firm had not adopted it in previous reports on the relief road. As I have observed in other cases, the fact that a method is new doesn't mean that it is wrong. However, I am not persuaded that Mr Lawrence's comparison on a before and after, combined, basis provides a realistic reflection of how the claimants have been affected by noise.

71. Mr Lawrence's acceptance that there had been a significant and clearly noticeable increase in road traffic noise was an important one. From the evidence of all of the claimants, I am not persuaded that adopting a L_{Aeq} method adequately reflects how the levels of noise have altered as a result of the relief road. I prefer the use of the L_{A10} data to that of the L_{Aeq} data.

72. However, it is common ground that even the L_{A10} data did not capture the change in *character* of the noise as a result of the relief road. Neither of the experts was able to provide a way in which the change in character could be measured, and I have fully accepted the evidence of the claimants in how the change in character of noise has affected them. I am satisfied that there has been a significant change in character of noise.

73. I reject Mr Lawrence's view that the majority of people would not be disturbed by the change in noise – it is plain that, without exception, the claimants were annoyed by it.

74. Accordingly, to the extent that I need to prefer one party's expert acoustic evidence to the other's, I am not persuaded that TfL's position is correct. I am satisfied that the major effect on the claimants has been the significant increase in road noise in the formerly quiet periods between trains. It is necessary to now consider what effect that has on the valuation evidence, if any.

Expert Evidence - Valuation

Settlement evidence

75. This point can be dealt with fairly shortly. Of the 19 references to the Tribunal, four were settled prior to the hearing, and three were withdrawn. The settlements were in respect of numbers 13, 16, 18 and 20 Windermere Road. It is unnecessary to outline the settlement figures, save to say that in each case they were less than Ms Veness's valuations, but above the nil valuations of Mr Pugh.

76. Mr Burton originally submitted that TfL's pleaded case had been overtaken by the payment of compensation on the four settlement properties, which had experienced a fraction of the increase in noise levels of the elevated properties, and asked how TfL's case had changed as a result of this. Mr Walton responded that TfL's position had not changed, and that the settlements were simply the prices at which the parties were prepared to compromise.

77. Ms Veness filed, by agreement, a second report which revised her opinions: partly owing to Mr English's second report (Mr English having by that point seen Mr Lawrence's updated modelling); and partly owing to the settlement figures, on which she placed reliance. In cross examination, she rowed back from that to an extent, agreeing that weight that should be attached to the fact that there had been settlements, but not to the settlement figures themselves, as both herself and Mr Pugh considered the settlement figures to be "wrong".

78. I have noted that four references to the Tribunal have been settled prior to the hearing, but I have not attached any weight to the fact that there have been settlements, nor to the settlement amounts, to which neither valuation expert attributed any weight. There is transactional evidence which the experts, rightly in my view, prefer and even in the absence of better evidence I would have treated settlement evidence with caution, a position which the Tribunal has repeatedly endorsed (*Delaforce v Evans and Evans* (1970) 22 P&CR 770 and more recently in *Wolff v Transport for London* [2008] RVR 316).

79. Settlements reached after a reference has been made reflect a complex amalgam of factors, including each party's assessment of their prospects of success, the value they place on the claim should it succeed, their appetite for risk, their exposure to costs and other imponderables incapable of rational analysis. They say nothing useful about the diminution in value of the property in question.

Valuation Evidence

80. Ms Penelope Veness BA FRICS is a chartered surveyor and a director of Edward Payne and Veness, whose office is approximately two miles from the claim properties. She has practised in the local area for 30 years and is familiar with Coulsdon both before and after the construction of the relief road, including living in the town for two years in the 1970s. Her work includes valuations for the London Borough of Croydon under Right to Buy legislation, and valuations for secured lending, charities, lease extensions and inheritance tax purposes.

81. Ms Veness's original report dated 3 November 2014 relied in part upon Mr English's first report of June 2014. When this was updated, Ms Veness updated her evidence by way of a second report dated 24 December 2015.

82. Ms Veness described Coulsdon as a town with some urban ribbon development but mainly leafy suburbs with areas of open land. The majority of potential purchasers are seeking quiet semi-rural properties close to schools, transport and shops.

83. Ms Veness said that Brighton Road is urban in nature and is affected by traffic noise from the A23. It has a variety of Victorian, 1930s semi-detached houses and infill houses built from 1930s onwards. She said that the elevated properties, in Cordrey Gardens and Deepfield Way were built in the 1970s on a semi-rural estate in a wooded open plan format with many of the properties fronting quiet walkways and small copses. There was some background noise from fast train links to Gatwick and Brighton. Prior to the relief road, the A23 was 320 to 400 m away whereas the relief road is now 90 to 200 m away. In her view, whilst a potential purchaser would accept some background noise, the extent of the increased noise from the relief road would cause a potential purchaser to reduce their bid. In her opinion the better quality of the elevated properties in Cordrey Gardens would normally attract a premium which would be lost as a result of the Part 1 factors.

84. Mr Richard Pugh BSc(Hons) MRICS is a chartered surveyor and is now the head of transport in the St Albans office of DVS, part of the Valuation Office Agency. He is a member of the Compulsory Purchase Association and has over 25 years post qualification experience. He has extensive experience in dealing with claims under Part 1 of the 1973 Act including the M25, the A27 in Sussex, the A27 widening in Hampshire and many others.

85. Mr Pugh said that Coulsdon is located in a significant transport corridor with two high-speed rail lines and one slower line on which together 600 trains run daily, including at night. He considered that, absent the relief road, the claim properties were in locations that would experience appreciable levels of noise from a number of sources including the existing A23 and the various rail lines in the vicinity.

86. Ms Veness and Mr Pugh agreed "switched off" values together with pre-relief road and post-relief road distances to the A23 carriageway, as follows:

Claim Property	Distance to A23 (m)		"Switched off" value
	Pre-relief road	Post-Relief road	
79 Brighton Road	80	20	£310,000
22 Cordrey Gdns	215	145	£195,000
51 Cordrey Gdns	300	125	£195,000
53 Cordrey Gdns	320	130	£205,000
55 Cordrey Gdns	335	130	£310,000
56 Cordrey Gdns	340	135	£300,000
59 Cordrey Gdns	355	145	£305,000
61 Cordrey Gdns	370	155	£305,000
66 Cordrey Gdns	360	150	£325,000
67 Cordrey Gdns	370	155	£310,000
68 Cordrey Gdns	380	160	£300,000
76 Deepfield Way	370	200	£320,000

87. It is necessary to consider how the limited amount of available comparable evidence should be adjusted for time and market conditions. Both valuation experts relied upon Land Registry house price indices. Ms Veness used the Surrey index, saying that Coulsdon was closer in nature to Surrey than it was to Croydon, and that she used the Surrey index in her practice. Mr Pugh preferred the Croydon index, since Coulsdon was in that London Borough. He had never encountered comparable evidence of a property being subject to an index for an area in which it was not actually located.

88. In my judgement both indices are likely to have had some relevance to Coulsdon, which is located on the southern fringe of the Croydon borough, adjacent to the northern boundary of Surrey. Whilst I accept that Ms Veness's practice is to use the Surrey index, it seems illogical to me to wholly rely upon it since the properties are actually in Croydon and the comparable transactions referred to would (I assume) have been part of the data which made up the Croydon Index. I have therefore adopted a blended index approach, averaging the results of the two sets of indices.

89. There was also a small difference between the valuers as to how the indices should be applied. Ms Veness used a ready reckoner, but I prefer Mr Pugh's method of adjusting mathematically using the index figures themselves.

90. Both valuers used the indices to adjust the available evidence in order to arrive at equivalent values of that evidence at the valuation date of December 2007. These equivalent values were then compared with the agreed switched off values in order to

ascertain whether they had been affected by the physical factors from the use of the relief road.

91. I would add here that there was some dispute regarding the state of the market at the valuation date. I do not consider this to be particularly helpful as a topic, since the state of the market will be reflected in the transaction comparables, and the indices.

92. There were a number of comparable transactions which can assist in assessing any depreciation in value of claim properties. The most useful, is 46 Cordrey Gardens which changed hands three times between September 2003 and October 2015 at the following values:

September 2003:	£167,500
August 2007:	£194,950
October 2015:	£260,000

93. The experts were unable to agree a switched off value with which to compare these transactions. I do not consider that anything turns on that since the sales can be analysed against each other, as actual transactions in the market, rather than against a switched off value.

94. In order to compare the September 2003 sale of 46 with later sales, it is necessary to assess whether it reflected a true "pre-relief road" value, or whether it had been detrimentally affected as a result of knowledge that construction of the project was going to take place. The valuation experts agreed that the proposals for the relief road would not appear in any local search as part of the purchase of the property. Ms Veness said that there had been proposals for road schemes in Coulsdon for decades, and she did not consider that the proposals for the relief road would have had any effect on the purchase price of number 46 in September 2003. Mr Pugh thought that an informed purchaser would have been aware of the proposals, and that there could have been (he put it no stronger than that) an effect on value.

95. Mr Lawrence included a very helpful timeline in his report which indicated that plans for a bypass in Coulsdon had been floated since the mid-1960s. The petrol filling station at the junction of Windermere Road and Brighton Road had been demolished in September 1995, and demolition of properties in Windermere Road and Brighton Road had started by April 2003. I am not persuaded that the 2003 value was affected by the impending relief road, as there was no evidence that this was the case. Mr Pugh did not argue the point particularly strongly, and I have relied upon Ms Veness's local knowledge and experience in reaching the conclusion that the sale of 46 Cordrey Gardens in September 2003 can be safely regarded as an open market transaction unaffected by the impending construction of the relief road.

96. Helpfully, the next sale of the property was in August 2007. Whilst this is before the valuation date (12 months after first use), it is after the relief road opened and was in use and accordingly is a transaction with the relief road "switched on". If the sale at September 2003 at £167,500 is adjusted using the Surrey index, the property, should have been sold in August 2007 for something in the order of £212,528. Using the Croydon index, the sale should have achieved £204,780. It actually sold for £194,950, suggesting an average loss using a blended index, of £13,704, or around 6.5%. Even on Mr Pugh's best case scenario using the Croydon index alone, the loss equates to £9,830, or just under 5%.

97. Similarly, the sale in October 2015 at £260,000 can be analysed. Using the sale, in a "no scheme" world, of £167,500 at September 2003, and indexing forward using a blended approach, the property should have achieved £271,441 (with the two indices having narrow parameters of £270,181 and £272,699), therefore the sale at £260,000 shows a loss of £11,441 or around 4%. Again, even on Mr Pugh's basis, the loss would be 3.8% or thereabouts. This comparison perhaps has less validity, as it relies upon using an index over a 12-year period, but nevertheless provides a similar result to that over the shorter period.

98. 53 Cordrey Gardens, having an agreed switched off value of £205,000 at December 2007, was sold in May 2010 at £186,000. When that sale price was adjusted using the Surrey index, the equivalent value of December 2007 is £196,947, suggesting a loss of £10,947 of 5.5%. When the Croydon index is used, the adjusted value reaches £209,198, showing no loss. A blended index would give £202,847, showing a slight loss against £205,000 of just over 1%.

99. I have not derived as much assistance from the other comparables. 66 Cordrey Gardens, had an agreed switched off value of £325,000. It was independently valued at £300,000 in June 2012. The equivalent value on a blended-index basis would have been £323,172 at December 2007, suggesting a minor loss. I have placed less weight on this as it is simply based on a valuer's opinion, rather than a transaction in the market.

100. 19 Windermere Road, with an agreed switched off value of £340,000 at December 2007, was sold in March 2008 at that figure. Indexing back using the Surrey index would suggest an adjusted figure of £337,100, a loss of £2,700 or 1%. 20 Windermere Road, with an agreed switched off value of £345,000, was sold in April 2014 at £350,000. Again, indexing back would suggest a value at December 2007 of £329,100 – a loss of £15,900 or 4.6%. I do not derive much assistance from these two comparables in assessing the value of the elevated Coulsdon Woods properties on Cordrey Gardens and Deepfield Way, but there are useful as background in respect of 79 Brighton Road, which I come to later.

101. I accept that a different analysis by reference to the agreed switched off values might give different results, but in my judgement more weight can be placed on <u>actual</u> transactions in the market. The use of indices is acceptable, when there is little evidence to go on, but

their effectiveness is more diluted the longer the period over which they are used. In this case, we have two sales, one "switched off" and one "switched on", on the same property within the space of four years. I have therefore placed significant weight on the apparent loss in value of 46 Cordrey Gardens of around 6.5% during the period September 2003 to August 2007. Whilst the August 2007 sale is before the statutory valuation date, it occurred in comparable physical circumstances where the road had been open for eight months.

102. Accordingly, in order of weight, I place the most weight on the comparison of actual sales at 46 Cordrey Gardens showing a loss of 6.5% from September 2003 to August 2007. Next, the comparison showing a loss of around 4% from September 2003 to October 2015. I place less weight on the sale of 53 Cordrey Gardens, against the agreed switched off value, showing a loss of just over 1%, and the valuation of 66 Cordrey Gardens, as both are a comparison with valuation opinion. In respect of the elevated properties, I do not derive much assistance from the sales of 19 and 20 Windermere Road, first because they are again comparisons with valuation opinion, and secondly they are in respect of the "flat" properties, some distance away.

103. During cross-examination, Mr Pugh made some significant concessions. His expert report was on the basis that changes in noise of between 1dB(A) and 2dB(A) may be perceptible but would be regarded as minor and negligible, whereas "3dB(A) was the smallest change perceptible in the field". In evidence, he said that this was his experience from dealing with thousands of Part 1 claims. However, he was taken to the Statement of Agreed Facts, which stated that a change of 1dB(A) is the smallest change perceptible.

104. There was a slightly odd diversion when Mr Pugh suggested that this 1dB(A) might be under laboratory conditions, but in the end he agreed that he had been wrong to consider that 3dB(A) was the smallest change perceptible, on the basis of the short term impact table outlined in paragraph 46 above. He accepted that in his expert report, rather than referring to 3dB(A), he should in fact have said:

> "Accordingly in my opinion, increases in noise of less than **1dB(A)** are unlikely to be capable of adversely influencing the hypothetical purchaser's market bid for a residential property" (my emphasis).

105. In closing, Mr Burton submitted that Mr Pugh had completely misunderstood what Mr Lawrence was presenting when Mr Lawrence set out his "combination/overall" L_{Aeq} road/rail figures. It was apparent that Mr Pugh was confused as to whether these were even L_{Aeq} figures at all, as he consistently referred in the appendices to $L_{A10\ 18hr}$. But what he had done was to treat them as capturing any perceptible (or in his view not perceptible) change in noise by reason of the relief road, directly contrary to what Mr Lawrence himself had warned of. Mr Burton went on to submit the Mr Pugh had missed, entirely, the $L_{A10\ 18\ hr}$ road traffic noise increases that Mr Lawrence reported on (he was clear that he had decided simply "not to use them"), and so he had missed that road traffic noise had doubled for the elevated properties. Mr Burton said that Mr Pugh had plainly not taken on

board what Mr Lawrence had actually said in terms in his main report that the changing noise from the new road was "significant" and "clearly noticeable". It is apparent that Mr Pugh relied overwhelmingly on his understanding of Mr Lawrence's report to inform his appreciation of the changing noise as he had no experience of the position pre-relief road.

106. I accept the thrust of those submissions. To his credit, Mr Pugh readily accepted that his report was wrong in these respects, and that he had proceeded on an erroneous basis. He said, however, that these errors did not affect his opinion of value, as the evidence still supported his position.

107. In my judgement the evidence does not, in fact, support his position, especially in the case of 46 Cordrey Gardens. Again, in fairness to Mr Pugh, the last transaction on this crucial comparable was not known to him when he drafted his expert report, as it was introduced by Ms Veness in her second report.

108. I am persuaded that the increases in noise which the claimants each described, and which are borne out in the undisputed L_{A10} data, have had a depreciating effect on values, as shown by the limited valuation evidence. I am satisfied that road noise increased in volume, and changed in character, to a sufficient degree to have a depreciating effect on the market value of the elevated claim properties, in general terms.

109. I remind myself at this point that the hypothetical purchaser might not feel the same about noise as the claimants that have experienced the properties in a pre-relief road world. However, in my judgement there is sufficient evidence that in this case it is more likely that he or she would have done, as I have placed weight on the claimants' evidence of visitors commenting on noise, and Mrs Allan's property being on the market for some time, with (albeit untested and second-hand) evidence that prospective purchasers were put off by the road noise.

110. In respect of artificial lighting, I am not persuaded that this has had a detrimental effect on value. For example, when I stood in Mr Kamali's bedroom, with the lights off, I did not consider the headlights from vehicles exiting the industrial estate junction to be that problematic. I accept Mr Walton's submission that the hypothetical purchaser would simply assume that they would use curtains, blackout blinds or other methods.

111. In respect of dust at the elevated properties, Ms Veness had wrapped these up in her assessment of a 5% decrease in value. She accepted in cross-examination that dust would lead to "very, very little" depreciation in value, and I agree with that.

112. It is clear that the main elements were noise, followed by artificial lighting. Ms Veness did not break her 5% into component parts, but on the other hand Mr Pugh did not provide a valuation on any alternative basis, should I not be with TfL on the issue of noise.

113. In the absence of any valuation evidence differentiating between the properties, I consider that the appropriate depreciation in value as a result of noise, with a minimal effect of

dust, is a 4% reduction to each of the elevated properties. I have made a reduction from the amounts claimed as I am not persuaded by the case for the effects of artificial light in respect of the elevated properties.

114. The final aspect is whether there has been any effect on the value of 79 Brighton Road. Using the L_{A10} data, the increases in road noise were minor, but perceptible as they are slightly over 1d(B). However, the main issues for Mr and Mrs Goodman are the character of the noise, which none of the data measures, and lighting. Having stood in the front bedroom of the property at dusk, my perception was that the light from the newer lighting columns was brighter than that from the old columns, and Mr Goodman's evidence in this respect was unchallenged.

115. In respect of the character of the noise, Mr English had stood in the back garden of 79 Brighton Road, and was very aware of the noise coming from the gap between the church and number 81 Brighton Road. Mr English said that there were some incredibly noisy lorries juddering to a halt, and he believed that the climate of noise would have changed with the introduction of the traffic lights. Mr English had taken some measurements that indicated a much larger increase than those modelled in Mr Lawrence's work, but said that this could have been from the abrupt stopping and starting of vehicles.

116. Mr Lawrence, who had not been in the back garden of the property, did not dispute what Mr English had heard, but said that this did not mean that the character of noise had changed since the relief road opened.

117. Mr Lawrence's report said that one of the main factors affecting potential changes in noise was the introduction of traffic lights at the northern end of the relief road, which causes the flow of traffic on the A23 to stop in this area with the cycle of traffic, whereas previously traffic would have been free-flowing except during busy periods. He said that this might affect the character of the traffic noise and therefore its perception in the area near this junction.

118. I remind myself that Mr Goodman's evidence was that the character of the noise had changed as a result of the introduction of traffic lights, particularly from lorries and HGV's. When I stood in the garden, I heard trains, but also notable noise from the road, with vehicles obviously approaching a junction.

119. I am satisfied that the character of the noise, to an extent the level of noise, and to a lesser the brighter street lighting, would have had a detrimental effect on the value of the property. Having regard to Ms Veness's local experience, and the sales of 19 and 20 Windermere Road in comparison with their agreed switched off values, I am satisfied that a prospective purchaser of 79 Brighton Road would have reduced their bid as a result of the physical factors arising out of the use of the relief road, and I accept Ms Veness's contention of a 1% reduction, which she rounded to £3,000.

Disposal

120. I determine compensation as follows:

Claim Property	"Switched off" value	Compensation
79 Brighton Road	£310,000	1%: £3,100 say £3,000
22 Cordrey Gdns	£195,000	4%: £7,800
51 Cordrey Gdns	£195,000	4%: £7,800
53 Cordrey Gdns	£205,000	4%: £8,200
55 Cordrey Gdns	£310,000	4%: £12,400
56 Cordrey Gdns	£300,000	4%: £12,000
59 Cordrey Gdns	£305,000	4%: £12,200
61 Cordrey Gdns	£305,000	4%: £12,200
66 Cordrey Gdns	£325,000	4%: £13,000
67 Cordrey Gdns	£310,000	4%: £12,400
68 Cordrey Gdns	£300,000	4%: £12,000
76 Deepfield Way	£320,000	4%: £12,800

121. This decision is final on all matters other than costs. A letter on costs accompanies this decision.

5 April 2016

P D McCrea FRICS

APPENDIX

			Mr English - $L_{A10\ 18hr}$ Road noise				Mr Lawrence - $L_{Aeq\ 18hr}$ Road + Rail noise			
Claim Property	**Façade**	**Floor**	**2004**	**2021**	**Change**	**Increase**	**2004**	**2021**	**Change**	**Increase**
22 Cordrey Gardens	S, front	1	42.2	51.4	9.2	Major	46.4	50.5	4.1	Moderate
	S, front	2	45.5	53.9	8.4	Major	51.2	54.0	2.8	Minor
	N, Rear	1	48.1	51.7	3.6	Moderate	59.2	59.4	0.2	Negligible
	N, Rear	2	49	52.8	3.8	Moderate	60.7	60.9	0.2	Negligible
51 Cordrey Gardens	S, front	1	43.8	55	11.2	Major	48.6	53.7	5.1	Major
	S, front	2	46.7	57	10.3	Major	53.4	56.7	3.3	Moderate
	N, Rear	1	49.7	55.5	5.8	Major	62	62.4	0.4	Negligible
	N, Rear	2	50.4	57.4	7	Major	62.9	63.5	0.6	Negligible
53 Cordrey Gardens	S, front	G	43.7	54.9	11.2	Major	50.2	54.2	4	Moderate
	N, rear	G	48.2	55.4	7.2	Major	57.2	58.4	1.2	Minor
79 Brighton Road	NW, front	G	71.8	73	1.2	Minor	69.3	70.5	1.2	Minor
	NW, front	1	73.5	74.7	1.2	Minor	71	72.2	1.2	Minor
	SE, Rear	G	48.1	49.1	1	Minor	48.3	48.9	0.6	Negligible
	SE, Rear	1	51	52.1	1.1	Minor	50.6	51.3	0.7	Negligible
55 Cordrey Gardens	W, Front	G	48.1	57.2	9.1	Major	58.6	59.9	1.3	Minor
	W, Front	1	48.7	58.5	9.8	Major	59.9	61.2	1.3	Minor
	E, Rear	G	41.1	46.5	5.4	Major	51.8	52.3	0.5	Negligible
	E, Rear	1	42.9	48.2	5.3	Major	53.3	53.8	0.5	Negligible
56 Cordrey Gardens	W, Front	G	48.1	57.3	9.2	Major	58.5	59.9	1.4	Minor
	W, Front	1	48.7	58.5	9.8	Major	59.7	61.1	1.4	Minor
	E, Rear	G	38.4	43.2	4.8	Moderate	43.9	45.1	1.2	Minor
	E, Rear	1	40.9	46	5.1	Major	44.7	46.5	1.8	Minor
59 Cordrey Gardens	W, Front	G	48.9	58.2	9.3	Major	58.8	60.3	1.5	Minor
	W, Front	1	49.5	59	9.5	Major	59.6	61.2	1.6	Minor
	E, Rear	G	48	57.2	9.2	Major	57.5	59.1	1.6	Minor
	E, Rear	1	48.7	58.2	9.5	Major	58.5	60.1	1.6	Minor
61 Cordrey Gardens	W, Front	G	46.2	56.1	9.9	Major	57.7	59.0	1.3	Minor
	W, Front	1	46.9	57.2	10.3	Major	58.7	60.0	1.3	Minor
	E, Rear	G	41	45.2	4.2	Moderate	44.8	46.2	1.4	Minor
	E, Rear	1	43	47.6	4.6	Moderate	46.5	48.2	1.7	Minor
67 Cordrey Gardens	E, Front	G	39	43.4	4.4	Moderate	43.2	44.6	1.4	Minor
	E, Front	1	41.9	46.8	4.9	Moderate	44.2	46.5	2.3	Minor
	W, Rear	G	50	58.1	8.1	Major	58.1	59.8	1.7	Minor
	W, Rear	1	50.6	59.5	8.9	Major	59.7	61.4	1.7	Minor
66 Cordrey Gardens	E, Front	G	38.7	43.1	4.4	Moderate	43.3	44.6	1.3	Minor
	E, Front	1	41.6	46.4	4.8	Moderate	44.2	46.3	2.1	Minor
	W, Rear	G	49.6	59	9.4	Major	59.6	61.1	1.5	Minor
	W, Rear	1	50.1	59.7	9.6	Major	60.3	61.9	1.6	Minor
68 Cordrey Gardens	E, Front	G	39.5	43.9	4.4	Moderate	43.1	44.7	1.6	Minor
	E, Front	1	42.5	47.5	5	Major	44.9	47.2	2.3	Minor
	W, Rear	G	49.8	57.5	7.7	Major	56.5	58.5	2	Minor
	W, Rear	1	50.4	59.2	8.8	Major	59.1	60.9	1.8	Minor
76 Deepfield Way	E, Front	G	39.5	43.3	3.8	Moderate	42	43.6	1.6	Minor
	E, Front	1	43	47.2	4.2	Moderate	44.5	46.7	2.2	Minor
	W, Rear	G	49.2	58.2	9	Major	57.4	59.4	2	Minor
	W, Rear	1	49.9	58.8	8.9	Major	57.9	60.0	2.1	Minor

Note: Mr English made an error with the 2021 figure for the north face of 53 Cordrey Gardens, having 52.5, being a moderate increase of 4.3, whereas the correct reading was as shown above.