

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2017] UKUT 2 (LC)
Case No: ACQ/77/2015**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory purchase – Grade II Listed house in disrepair – owner’s failure to comply with Repairs Notice or Urgent Works Notice – development prospects – cost of repair and renovation - valuation – comparables - Section 5(2) Land Compensation Act 1961- compensation determined at £125,000

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

MAVIS HILDA MARY MEREDITH

Claimant

- and -

**KING’S LYNN & WEST NORFOLK BOROUGH
COUNCIL**

**Acquiring
Authority**

Re: The Manor House, 52 High Street, Northwold, Norfolk IP26 5LA

HH Judge David Hodge QC & Paul Francis FRICS

19 & 20 October 2016

Royal Courts of Justice, London WC2A 2LL

Mark Westmoreland Smith, instructed by Metcalfe Copeman and Pettefar, solicitors, for the Claimant

Dean Underwood, instructed by NP Law for the Acquiring Authority

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The following case is referred to in this Decision:

Hemingby Agricultural Traders Ltd and Another v East Lindsey District Council [2010] UKUT 390 (LC)

DECISION

Introduction

1. This is a claim for compensation by Mrs Mavis Meredith (“the claimant”) following the compulsory acquisition of The Manor House, 52 High Street, Northwold, Norfolk IP26 5LA (“the subject property”) by King’s Lynn and West Norfolk Borough Council (“the council”) pursuant to the King’s Lynn and West Norfolk Borough Council (The Manor House, Northwold) Compulsory Purchase Order 2012 (“the CPO”).

2. The claimant seeks some £360,000 on the premise that the house, adjoining cottage and land would have been worth, at the agreed valuation date of 18 September 2013, between £950,000 and £975,000 if repaired and renovated at a total cost estimated to be in the region of £400,000 to £450,000. The acquiring authority contends that the cost of essential repair, renovation and restoration works to bring the property up to a good but not excellent habitable standard would be about £1.2 million, considerably more than its potential open market value. Nevertheless, it was acknowledged that there would some positive value which, in all the circumstances, would have been no more than £35,000 to £65,000.

3. Mr Mark Westmoreland Smith of counsel appeared for the claimant and called Mr Nigel Morgan MA Dip Arb FRICS of Spalding & Co, Chartered Surveyors, North Walsham, Norfolk who gave expert valuation evidence.

4. Mr Dean Underwood of counsel appeared for the council and called Professor Warwick Rodwell OBE BSc BA MA DPhil DLit (Oxon) DLit (Lond) DLC FSA FRHistS FSAScot who gave evidence of fact relating to his purchase of the subject property from the council following the compulsory acquisition. He explained the property’s history, which he had researched in considerable detail, its condition at the valuation date, his proposals for the restoration and the anticipated total costs of repair together with an indication of the monies so far expended up to October 2016. A brief statement supporting and concurring with Professor Rodwell’s account was provided by his wife, Diane Gibbs, but she was not called. Further evidence of fact was called from Mr Stephen Heywood, Historic Buildings Officer, Norfolk County Council, and Mr Stuart Ashworth, Assistant Director of Environment and Planning at the council. Expert evidence relating to the condition of the property and likely costs of repair was given by Mr Tony Saffery BSc (Hons) MRICS, a partner in Strutt & Parker LLP of Guildford, and valuation evidence was provided by Mr Russell de Beer BA (Hons) MSc (Hons) MRICS also a partner in Strutt & Parker LLP, based in their Norwich office.

5. With the agreement of the parties, the Surveyor Member of the Tribunal undertook an accompanied inspection of the subject property together with a number of relevant local comparables on 2 November 2016. We are grateful to Professor Rodwell for allowing him unfettered access to the buildings and grounds of the subject property, and for the extensive and helpful factual background that he provided in his witness statement.

Factual background

6. The Manor House is an imposing Grade II Listed detached village house located in a Conservation Area in the heart of Northwold, a linear west Norfolk village approximately equidistant between Thetford, Swaffham and Downham Market, each about 10 – 12 miles away. It was agreed that the village was not one to which a ‘locational premium’ would apply in the market. The original part of the main house was built in the 17th century and was apparently substantially ‘reworked’ in 1721. It is L shaped, of brick construction under part slate and part Burlington clay pantiled roofs, is double fronted with sash windows to ground and first floors and has sash dormers serving second floor attic rooms. There are Dutch gables to the eastern flank wall and the end wall of the rear outrigger and there are large basements running under the majority of the footprint. An imposing two storey staircase hall and porch was added to the western end in 1814 followed by a brick built two-storey extension to the west of that in 1816. This comprised a ground floor ballroom with large drawing room over and a further basement. To the west of that an orangery was constructed, but that has long since disappeared.

7. To the east of the main house there was originally an adjacent detached cottage of Tudor origins, built as a kitchen for the principal accommodation, and this was subsequently connected by the construction of an enclosed link. It was, at the valuation date, derelict and unsafe. There were also originally, but long since demolished or collapsed, stables built during the latter part of the eighteenth century and there was a vinery which had also disappeared by the valuation date. The principal house has accommodation totalling about 410 sq m (4,410 sq ft) with an additional 50 sq m (535 sq ft) in the basement. The adjoining former, but at the valuation date derelict, cottage has a further 107 sq m (1,155 sq ft) of accommodation and a small additional basement area, all of which had the potential to be renovated and occupied together with the main house. The remains of the cottage as described, if added to the then non-existent stable block would have provided an overall area of 150 sq m (1,614 sq ft).

8. The subject property which at the valuation date had gardens and grounds extending in all to 1.12 acres (with a part of the rear boundary backing onto and giving pedestrian access to School Lane), fronts directly onto the village street and is opposite the Grade 1 listed 14th century St Andrew’s village church. Vehicular access is off the High Street to the east of the cottage and gives on to the courtyard. Since the acquisition by Professor Rodwell, the freehold of a rectangular area of approximately 0.12 acre in the south-west corner of the plot and which had been fenced off and historically occupied as garden ground under licence by a neighbour (the owner of 59 School Lane), has been transferred to him for the sum of £20,000. The transfer was subject to a condition that the purchaser erected a substantial stone and brick wall along the whole of the Manor House boundary at his own expense. This, we were advised by Professor Rodwell, was at a cost of some £45,000. This area of garden was referred to as the blue land.

9. A further area of the rear garden, also extending to about 0.12 acre and lying immediately behind Nos. 6/8 and 10 Church Lane was historically a walled kitchen garden, but only small parts of that wall now remain. This was referred to in evidence as the brown land.

10. The Manor House was purchased by the claimant's late husband in November 1971 but it was never occupied as their permanent residence. They and their family occupied rooms sporadically but as the house deteriorated further they eventually took to occupying caravans in the garden area (for which temporary consents were received). In 1986 the Merediths were offered a 'Works in Conservation Areas' grant of up to £3,014 towards the cost of eligible repair works, but it was not taken up. Following complaints made to the council by members of the public and the local MP about the condition of the subject property in June 2001, by which time it had fallen into a state of very considerable disrepair, the council considered taking steps to compulsorily acquire it. Interest in taking it on, restoring it and then selling it on to a 'sympathetic' owner was expressed by the Norfolk Historic Buildings Trust ("NHBT") on condition that a Compulsory Purchase Order was made.

11. In October 2001, following a site inspection by the council, Mrs Meredith agreed to carry out some essential works including the removal of foliage and vegetation, clearing gutters and erecting a temporary roof. An application for Listed Building Consent was made to the council by Mrs Meredith in March 2002, and permission was granted on 25 March 2002 for the repair and refurbishment of the adjoining and adjacent courtyard buildings and their conversion into a single unit of residential accommodation, subject to a condition that it could only be occupied as ancillary accommodation to the main house. That work was never undertaken, and the consent subsequently lapsed.

12. As the subject property continued to deteriorate, the council served a Notice under section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the 1990 Act") specifying the work that was required to preserve it as a listed building. Again, none of the required work was undertaken and, following a further inspection by officers of the council in 2005, and the service of an Urgent Works Notice under section 54 of the 1990 Act, which was also not acted upon, a formal recommendation was made to commence CPO proceedings.

13. As time progressed, the Manor House began to appear in the 'Buildings at Risk' registers of Historic England, the Society for the Protection of Ancient Buildings and Save Britain's Heritage – the latter featuring it with a photograph on the front cover of one of its annual reports.

14. Pursuant to further complaints from the public, and a continuing failure to persuade Mrs Meredith to take action, a decision was finally made by the council to make a CPO on 6 September 2011. In the meantime, the claimant was advised in an email from Mr Neil Langley, Enforcement Team Leader of the council, that the market value of the property was £310,000 but that figure was subject to a caveat that it may need to be 'refreshed' due to the District Valuer's inspection having been severely curtailed by the amount of materials stored within the buildings with the result that an internal inspection was not possible. This correspondence was in the period during which NHBT had expressed interest, but they eventually fell away on the grounds that the extent of works required (then estimated in the region of £800,000) deemed the project unviable.

15. Inspections were carried out by CNC Building Control Officers in September 2011 and whilst considering that the building did not then currently constitute an immediate danger to the public and was relatively secure against unauthorised access, they expressed concerns about its continuing deterioration and recommended that an urgent roof survey be undertaken and that warning signs about potential dangers be posted around the outside.

16. In November 2011 the council undertook a further inspection in the company of the claimant's appointed surveyor, Mr Nigel Morgan, and at the same time commissioned a valuation from local estate agents, Bedfords. On 14 December 2011 Bedfords, in a heavily caveated report, suggested a market value of £220,000 on the basis of renovation costs estimated by architects and building contractors at c. £790,000 or £650,000 if undertaken by private purchasers doing some of the work themselves.

17. The CPO was eventually made on 11 September 2012, with Notice being served on the claimant on 29 September 2012 (to which she did not object) and was confirmed by the Secretary of State on 20 March 2013. Coincident with that, Mrs Meredith engaged the services of VPH Roofing Contractors to carry out extensive repairs to the roofs of the main property, the second floor dormers and the rainwater goods. Those works commenced on 18 April 2013.

18. On 20 April 2013 the council published notice in the local press stating that the CPO had been confirmed and seeking expressions of interest from potential purchasers. This was seen by Professor Rodwell who had recently retired from the majority of his consultancies and he and his wife carried out an initial inspection with Neil Langley of the council on 20 May 2013. Following a number of further inspections and investigations, extensive but unsuccessful negotiations took place with the claimant with a view to purchasing the property from her prior to the CPO becoming effective (see further reference below). However, a General Vesting Declaration ("GVD") pursuant to section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 was made on 8 August 2013 and Professor Rodwell then entered into an agreement with the council to acquire the subject property from them at a price of £125,000 for the freehold. That agreement was sealed on 12 August 2013 and the expectation was that he and his wife would take possession in October 2013 following the formal vesting which occurred on 18 September 2013 (the agreed valuation date for the purposes of this reference).

19. However, Mrs Meredith issued an application for Judicial Review of the council's decision to make the GVD resulting in a delay in the transfer to the Rodwells. The application was dismissed by HH Judge Jarman QC on the papers on 2 January 2014. A renewed application was again dismissed on 25 February 2014 by HH Judge Keyser QC following evidence being heard in open court. The delayed transfer eventually occurred on 24 April 2014.

20. The council made an advance payment of compensation to the claimant in the sum of £66,750 pursuant to section 52 of the Land Compensation Act 1961 representing 90% of its estimate of the value of the property at the vesting date of £75,000.

Issues

21. The sole issue for our determination is the value of the freehold interest in the subject property as at the agreed valuation date of 18 September 2013. In considering that value, we take into account the evidence relating to the condition of the property at that date and the anticipated costs of repair and refurbishment; whether there was, in planning terms, any opportunity to achieve development value in relation to any of the land; the state of market and the likely purchaser and the weight to be given to the comparables that were referred to by the valuation experts. We also consider, in the light of counsel's submissions, the valuation assumptions required in determining value in accordance with the provisions of section 5(2) of the Land Compensation Act 1961.

The claimant's case

22. **Mr Nigel Morgan** MA Dip Arb FRICS is a chartered surveyor who has been practising as an estate agent, surveyor and valuer in Norfolk for over 40 years. He said he has particular interest in, and personal knowledge of, listed properties having not only bought, renovated and maintained such a house for his own occupation, which had been empty for 14 years, but also, as a director of a family property company having undertaken the restoration of two substantial Grade II listed houses in the 1990s and is currently involved with the renovation of a listed building in Norwich which, he said, is currently in a state of 'total dereliction'.

23. He made the first of several inspections of the subject property (as far as it was possible to do so because of the condition of parts and the large amount of furniture and other effects stored therein) on 29 November 2011. He acknowledged that it was in very poor and uninhabitable condition, had been vandalised, and considerable ongoing deterioration was occurring due to rainwater ingress through the roof which was causing rot to occur to the extent that some of the floors had become unsafe. Some of the outbuildings had collapsed completely, the vine house had no roof and a former orangery had altogether disappeared. The grounds were significantly overgrown, and there were a number of mature trees, some of which were growing out of the house brickwork.

24. Mr Morgan said that extensive repairs to the roof, rainwater goods and lead valley gutters together with replacement of the four second floor dormers had been undertaken by a firm of builders on the instructions of the claimant between his first visit and the vesting date but nevertheless there was no suggestion that the house or any of the other buildings were in any way habitable at the valuation date. As to the costs incurred by Mrs Meredith in eventually getting these works done, he was of the view that whilst it was acknowledged some of those works (particularly to the rainwater goods and to the quality of the construction of the new dormers) was not to the standard which Professor Rodwell thought appropriate or good enough for a property of this importance, the works would serve to reduce the overall estimated costs of repair by about £50,000.

25. In undertaking the required valuation exercise, Mr Morgan said that there were four constituent parts of the property to consider: (1) The main Manor House with the potential to form a six or seven bedroom family home with principal accommodation amounting to around 4,500 sq ft. (2) The adjoining cottage which could provide accommodation extending to about 1,150 sq ft (or 1,600 sq ft if extended to take in the footprint of the former stables). (3) The “blue land” backing onto 59 School Lane and (4) The “brown land” of similar size lying to the south east of the plot and backing onto 8 & 10 Church Lane. With the brown and blue land sold off, the main house would be left with about three quarters of an acre of its own garden – that, in his view, being sufficient for a house of this size.

26. Mr Morgan said he had considered the relevant planning background in terms of the local authority’s Local Development Framework which was emerging post the Core Strategy that had been adopted in 2011, the National Planning Policy Framework published in March 2012 and the specific planning history relating to The Manor House. He said that whilst Northwold was identified in the Core Strategy as a Key Rural Service Centre in which provision was to be made for some 2,884 new dwellings, and there was now a presumption in favour of ‘sustainable development’, he acknowledged that any development in a Conservation Area or affecting a listed building would have to be consistent with preserving or enhancing the historic environment.

27. Nevertheless, there was a history of permissions for development of new dwellings in a number of locations within the Conservation Area and whilst the plots were not forming part of listed buildings, the permission for development within the rear garden of the adjoining Linden Cottage (one of the principal comparables) and also a listed building, for the conversion of a garage into an annexe and the construction of a full covering for the swimming pool was an indication that development, if suitably and sympathetically designed would be a distinct possibility.

28. In the light of this local planning history, it was Mr Morgan’s view that the brown land lying within the remains of an existing boundary wall (presumably having originally been a kitchen garden) and behind Nos. 6 & 8/10 Church Lane which abut the northern boundary, had some hope value for obtaining planning consent for a single new dwelling with a reinstated vehicular access through the rear boundary on to School Lane. That access had first been made in the 1920s but was stopped off in 1987 or 1989 and it was accepted that there may be highways difficulties with the local planning authority in reinstating it. However, it was a quiet lane, quite wide at the point where the access originally was and was speed restricted.

29. It was pointed out that the planning officer’s report on the development at Linden Cottage, the adjacent property to the south, said “...*the main consideration is the impact of the proposals on the site of a listed building*”, and that the development would be “*sufficiently distant from the main listed building so as not to affect its setting*”. That was, Mr Morgan said, despite the fact that Linden Cottage’s garden was very much smaller than the land behind the subject property. With the existence of an existing defined boundary separating the brown land from the main garden and bearing in mind how far away it is from the main house and buildings, Mr Morgan considered that it contained potential value for development and selling away and assessed that value, allowing a discount from plot value for risk, at c. £40,000. He

acknowledged that the Linden Cottage planning consent was based upon an existing footprint/structures and the brown land was a virgin site as far as development was concerned, but nevertheless was of the view that a potential purchaser of The Manor House would be encouraged by what had been approved in the vicinity and would certainly attribute at least some hope value to the prospect.

30. The brown land also had the potential for sale as additional garden land to the Church Lane properties, particularly as they are built very close to the boundary with The Manor House plot and thus currently have virtually no rear gardens.

31. The blue land, of similar size to the brown land and lying to the south-west corner of the Manor House grounds, had historically been fenced off and had been occupied under licence for many years as additional garden ground to No. 59 School Lane, which it abuts. The land has subsequently been sold by Professor Rodwell to the owner for continued use as garden for £20,000. That sale, which took place soon after completion of the sale of The Manor House by the council to Professor Rodwell was, Mr Morgan said, good proxy for its value as garden ground. That view was agreed by the council who accepted that the purchase price should be added to its estimate of the value of the rest of the subject property.

32. Turning to the value of the main house, Mr Morgan said he had considered a “basket” of likely purchasers. Whilst Professor Rodwell was obviously one, there would in his view be others with a similar ambition to be the “saviour” of a vulnerable but architecturally interesting and important listed building. Such purchasers would regard the expenditure they incur in undertaking the renovation as providing pleasure and satisfaction rather than as an investment that would recoup a profit. Other potential purchasers might comprise individuals or families who would see the opportunity to put their own “stamp on it” and create a large and imposing residence that suited their needs and aspirations. The purchaser of the main house could incorporate the cottage into the main accommodation, create a self-contained annexe or even a letting opportunity. It was agreed that the property as a whole would not be of interest to developers or speculators, although Mr Morgan thought that a limited pool of developers who specialise in complex historical projects like this one may have been in the market.

33. Concerning the price paid for the whole property by Professor Rodwell, Mr Morgan said it could not necessarily be deemed as proof of the property’s value due to the fact that in his view it had not been properly marketed. Whilst it was acknowledged that there were some people who kept an eye on things such as the Properties at Risk Register and the English Heritage website, he felt that if it had been fully exposed to the market in the normal way, interest from prospective purchasers would have been considerable – sufficient for there to be an element of competition despite the challenge of undertaking such a major renovation project. It could not be expected, as argued by the council, that anyone who might be in the market for this type of project would have found out about it anyway and the fact that it had not been properly exposed to the market was in any event contrary to the RICS valuation requirements.

34. As to the potential for obtaining permission for the conversion of the cottage into a separate dwelling, it was thought that if a condition were to be applied to a permission to the effect that it must be occupied as an adjunct to the main dwelling, there were no real grounds for sustaining such a condition if the applicant or a purchaser had chosen to dispute it. Whilst recognising that a sale away would undoubtedly have some detrimental effect upon the value of the main house, he thought its potential added an uplift of £50,000 to the overall value, although he accepted in oral examination that in marketing terms it would not be anticipated that the cottage would be likely to be sold off separately and was much more likely to be seen as potential ancillary accommodation to the main house.

35. Mr Morgan acknowledged that assessing the value of the main house was a major challenge, as there are relatively few examples of large village houses in the county of Norfolk, let alone in the immediate vicinity, that could be considered in any way comparable particularly those in derelict or semi-derelict condition. Indeed, he said such difficulties were supported by the fact that none of the properties relied upon by Mr de Beer could be considered comparable.

36. Within his expert witness report, Mr Morgan listed a number of properties, most of which were a significant distance away (including Blakeney on the north Norfolk coast) and only one was in Northwold (Linden Cottage, directly next door to the Manor House to the west), this also being relied upon by Mr de Beer. At the hearing it was agreed that those more local properties which should usefully be viewed by the Tribunal were Linden Cottage, West End Manor, Northwold (about half a mile along the High Street to the west), the George & Dragon, Northwold (again fronting High Street but slightly closer to the subject) and both of which were Mr de Beer's comparables, and Beech House Swaffham. However, Mr Morgan considered the circumstances relating to Kettlestone Old Rectory, Kettlestone (30 miles north east), and Chestnut Farm, Hingham (19 miles east) also supported his views on value.

37. Mr Morgan said that probably the most useful was Beech House, Swaffham. This was a large detached house of not dissimilar age and style. It has imposing looks, is Grade II listed, has extensive accommodation (even more than the subject property) and is set within walled and mature gardens extending to about 1 acre. The grounds contain a coach house which was suitable for conversion to additional residential accommodation. The main house was extensively modernised and improved following a sale in 2007, and was sold on in December 2012 for £810,000. Although he has not personally inspected that property, Mr Morgan considered its sale price was good proxy for the value of the subject property when fully modernised and renovated. He accepted that Beech House was in a town location, flanked by two roads and would not be as quiet as the Manor House. A wing of the house has also been sold off separately, meaning the driveway is shared and the house is now, therefore, effectively semi-detached. However, due to its close proximity to Swaffham town centre, it is much more convenient for local facilities, schools and shops, of which there are none in Northwold, other than a public house and a local junior school.

38. Linden Cottage, immediately next door to the Manor House to the west, is a very much smaller house, having an internal floor area of about 2,760 sq ft and although containing five bedrooms, one is no larger than a box room. It occupies a plot of only about ¼ acre and a large

part of the rear garden is taken up with the outdoor swimming pool (which in itself may be a distraction to potential purchases due to maintenance and running costs, and potential dangers for children, not being enclosed). In Mr Morgan's view the planning consent for enclosing the pool and for converting the garage to an accommodation annexe (which has not been put into effect) would not add value as the costs of implementing it would outweigh any increase in value to the whole. The house had been offered to the market in 2012 at an asking price of £425,000 which was later reduced to £400,000 but it failed to sell. Following a period during which it was let, it was re-offered in 2015 at £450,000 thence reduced to £430,000 but again a purchaser was not found. In his view the property would be of interest to a totally different market to the subject property, most likely appealing to a family and is a much more straightforward proposition than the subject.

39. Although accepting that Kettlestone Old Rectory was some 30 miles away and was in a more favoured part of north Norfolk, Mr Morgan said that this was a property that actually sold (unlike the majority of Mr de Beer's comparables, including Linden Cottage, which had not). It bore many similarities to The Manor House in that it was broadly similar although slightly smaller and was in need of major renovation and repair. It was sold by mortgagees in possession for £605,000 in November 2009 when the market was very much weaker than it was at the valuation date following intense interest that forced a "best and final offers" competition.

40. Chestnut Farm at Hingham is a detached Grade II listed farmhouse lying centrally within its own land which extends to some 5 acres in a rural location about two miles outside the village of Hingham, four miles from Wymondham and about 50% closer to Norwich than the subject property. Although significantly smaller than the Manor House, it was in need of complete restoration and modernisation. There was also a barn with the potential for conversion to further residential accommodation. It was sold by auction on 26 September 2013, very close to the valuation date, for £330,000 against an advertised guide price of £275,000 to £295,000.

41. Regarding Mr de Beer's comparables, Mr Morgan said that the only aspect of the George & Dragon in Northwold, a former public house that was being converted to a private dwelling, that was similar to the subject property was the extent of works that were being undertaken. It was being completely stripped down to a virtual shell. Otherwise it was a very much smaller property on a much smaller plot and did not have the appeal of the Manor House. It sold for £200,000 in autumn 2013 and his view was that if that price had been achieved for the George and Dragon, then the Manor House must have been worth substantially more.

42. West End Manor is, as its name suggests, another period property (dating from the late 17th or early 18th century) and is located towards the western end of Northwold's long village High Street. It offers family sized accommodation of just over 4,000 sq ft that has been extended over the years, including conversion of the dormered loft space to further bedrooms and a bathroom, provision of a garden room and a bedroom annexe linked to the main house. Extensive modernisation was also effected in the 1980s. The house is semi-detached, has a partially shared entrance drive and grounds extending to about three quarters of an acre and is not listed. It was marketed in 2014 at £550,000 but failed to sell. Mr Morgan said that

although there were certain similarities, West End Manor would appeal to a very different market – again being of interest to families who desired a reasonably large house that was virtually ready for occupation. It did not hold anything like the interest and appeal of the Manor House, and the fact that it did not sell meant a specific value could not in any event effectively be determined.

43. Mr de Beer had also referred to Winyards, a fairly modern if somewhat basic detached house on the edge of the village which was sold in October 2014 for £420,000 which, for a property that had 21 acres of grassland with it (and from which an agricultural restriction had been lifted in 2010) seemed low. That may have been, he said, because it fronted onto the busy A134 and was therefore in a much noisier location. In any event it was once more a wholly incomparable property for which the basket of buyers would be significantly different.

44. Regarding the rest of Mr de Beer's alleged comparables, it was considered that they were even less useful and much too far away to be of any assistance.

45. Mr Morgan said that the acquiring authority's complete disregard for the advice proffered by Bedfords in not exposing The Manor House fully to the market following its acquisition is at the root of the continuing failure of the parties to agree a value for compensation purposes. It needed to be borne in mind that Bedford's assessment of an end value following repair in the region of £850,000 was made in 2011 when the market was considerably less buoyant than was the case in 2013 and also did not take into account the value of the repairs that the claimant was to, and did eventually, carry out, - this reducing anticipated refurbishment costs by, as he had said, up to £50,000. Nevertheless, their estimate was very much in line with his own thoughts as at the valuation date.

46. As to what steps a prospective purchaser of a complex project such as this would have taken to inform himself of the likely costs, Mr Morgan said that in his experience whilst he would be expected to take some advice, he would not go to the lengths that Mr Saffery had suggested – although he did accept in cross-examination that the RICS valuation standards required an assumption that the parties were to be assumed to have acted reasonably, knowledgeably and to have been reasonably informed.

47. Such a purchaser would certainly be most unlikely to arrange for item by item budget costings, and whilst he may have a general regard to the BCIS tables (the RICS industry standard guide to renovation/rebuilding costs), he would probably adopt as a starting point a round figure of about £100 per sq ft (psf), to which he would add an allowance for unexpected costs due to the fact that the building could only be cursorily inspected and further problems would have been anticipated. Mr Morgan said that he would have anticipated repair and refurbishment costs to the house, to include compliance with the Repairs Notice but not allowing for any extensive works of the nature being undertaken by Professor Rodwell, at the valuation date, to be assessed in the region of £500,000 to £550,000 after allowing for the value attributable to the roof and other repairs undertaken by the claimant. This would, on the basis of a 4,500 sq ft building, amount to about £122 psf. It was worth noting, he said, that those

prospective purchasers who take the most pessimistic view as to likely renovation costs tended to be the unsuccessful bidders.

48. It was pointed out in cross-examination (and the relevant figures applicable for East Anglia “rehabilitation/conversion” costs as at August 2013 were produced and accepted by Mr Morgan), that the BCIS costs were on a sliding scale that varied very significantly between the lower quartile and the upper quartile and highest figures. Costs ranged from £98 psf for the lower quartile through £124 psf for the median rate to £198 psf for the upper quartile and as much as £428 psf for the highest renovation costs. It was suggested that Mr Morgan’s original estimate of c. £100 psf represented costs for much more basic renovation than would be appropriate here and that costs would be much more likely to be in a range between the upper quartile and highest figures, giving a figure of well over £900,000 for the Manor House alone, and approaching £1.2 million if the cottage/coach house was to be included. Whilst it was accepted that the costs would probably exceed his earlier estimate, Mr Morgan said that not all costs of renovation would be more than those applicable for more basic structures – for instance drainage works, repairs to brickwork and scaffolding costs. He thought that the type of purchaser that The Manor House would attract would be likely to take an optimistic view and would only use reference to the BCIS figures as a part of the consideration process. He accepted that his costings were exclusive of VAT which could add 10 to 20% to the project, and there was also no allowance for works to the gardens, grounds and boundary walls and neither was there any allowance for professional fees. Mr Morgan insisted that renovation to a reasonably habitable standard would be achievable for costs in the band he had adopted.

49. In summary, he said that on the basis that the property would have a value if completed to a reasonable overall standard (to include refurbishment of the cottage to provide a self-contained secondary dwelling) of £950,000 to £975,000 at the valuation date, or around £800,000 if the cottage were excluded, and renovation costs of £500,000 to £550,000, then the residual value that a prospective purchaser would be prepared to pay would be around £360,000: £250,000 for the main house, £50,000 for the cottage, £40,000 for the brown land and £20,000 for the blue land.

The case for the council

50. **Professor Warwick Rodwell OBE** is an architectural historian and archaeologist with over 40 years’ experience specialising in the investigation, analysis and restoration of historic buildings in Britain and the Channel Islands, including those of significant importance such as Westminster Abbey where he is consultant archaeologist, and Mont Orgueil Castle, Jersey. He is a visiting Professor in the Department of Archaeology at the University of Reading and during his career has specialised in the investigation and recording of ecclesiastical buildings. He is an accomplished author who, according to his Wikipedia entry, has produced upwards of 300 books, pamphlets, journals and papers

51. In 2012 Professor Rodwell decided to retire from all his consultancies, excepting Westminster Abbey, and to seek out and restore a major historic building in his ancestral county of Norfolk. In April 2013 he responded to the CPO notice that had been published in

the local press seeking expressions of interest in the subject property. Following the first inspection made by him and his wife, accompanied by Neil Langley of the council, the claimant's son wrote to him on 14 May 2013 stating:

“It was fascinating to go round The Manor House with you and I'm glad you and Diane found it interesting.

My mother has always wanted to restore The Manor herself but after living so many years in Zambia – followed by my father's lengthy illness – she is slowly realising that this might be too great a task even for her!

Speaking for myself, I would love to see the building restored in as sympathetic a way as possible. I also realise that it will be difficult for my mother to give up the property (and her future plans for it) and I hope that we can find a solution which will both satisfy my mother and be in the best interests of the building.”

52. It was evident upon inspection, Professor Rodwell said, that the building was once a fine house of Georgian and earlier origins. However, the entire property was rapidly approaching terminal collapse – hence the 17 Acrow props that had been installed to support decaying floors and beams to prevent further collapse occurring. From his experience in overseeing the restoration of four major Georgian houses in similarly parlous condition for trusts and private clients, he said that despite it being obvious that the cost of restoration would far exceed the property's potential value once the works were completed, he and his wife were inspired to rescue it and to restore it appropriately as their own personal residence. There was, as had been explained to the council and the claimant, no intention to develop the property in any way for commercial gain, and upon the Rodwells' demise, it was the intention that it should be handed over to a charitable buildings trust. Professor Rodwell said he explained in a letter to Mr Langley following the first visit that his experience included the supervision of the restoration of a house in the Channel Islands for the National Trust for Jersey where, for a somewhat smaller property than The Manor House, remedial works were costed at £850,000 but ended up at almost £1 million. Thus, he said, he was under no illusion as to the nature and magnitude of the difficulties involved.

53. On his second visit, Professor Rodwell said he inspected the works being carried out by the roofing contractors employed by the claimant, and discussed their programme with them. It became immediately apparent that they were not undertaking a thorough repair but had obviously been engaged to carry out an operation that could only be described as cosmetic. For instance, decayed and rotting supporting timbers were not being repaired or replaced, there was no evidence of cleaning to rafters or treatment for woodworm, no insulation was being installed in the attics and the replacement dormers did not match the originals. They were not being constructed in oak, but were being shoddily built in softwood with the elements being assembled with a nail gun rather than screwed together. Even the lead work was not to the required standard. Sections of guttering and downspouts were renewed with cross-sections of the wrong gauge, and where repairs were being done, joints were untidily sealed with black mastic that was ineffectual and unsightly. There was also no work being done to the chimneys which were in dire need of repointing, despite the fact that scaffolding had been installed and the costs of these essential works could therefore have been reduced by doing them at the same time. Of further concern was the fact that Listed Building Consent for the roof works and dormer replacement had not been obtained and those works were therefore unlawful. The concerns about the quality of work were relayed to Neil Langley and the view was expressed that the £50,000 odd that was being spent by the claimant on the roof repairs would not have the effect of reducing projected overall restoration costs because some of the work would have

to be redone and, for instance, the cost of insulating the roof after it had been recovered would be significantly more than if it had been done at the time.

54. In the light of the condition, having discussed the prospects and likely costs of restoration with colleagues involved in similar work elsewhere in Norfolk, and being aware of the adjacent Linden Cottage which was said to be in immaculate condition and was failing to sell at an asking price of £425,000, Professor Rodwell concluded that the property could only realistically have a very nominal value. Knowing of a number of examples where the freehold of derelict properties had been transferred to individuals and trusts where it was known that renovation costs would far exceed any completed value, and in the knowledge that the roof repairs were of such poor quality, Professor Rodwell reverted to his initial conclusion that the house would not be worth more than £100,000.

55. Nevertheless, he and his wife were keen to proceed and initially offered Mrs Meredith £100,000 which she declined, saying (without any apparent supporting evidence) that the house was worth £350,000 to £400,000. He said Mrs Meredith's expectations could not be justified. However, the offer was subsequently increased to £150,000, and then to £200,000 – said to be “without prejudice, subject to contract, and on condition that the roof repairs were completed to the required standard” – which they were not. The increased offers were also refused.

56. There were then some discussions with the claimant about the possibility of doing a property swap with the Rodwells' existing house in Gloucestershire, but these did not come to fruition, and it was decided to await the outcome of the CPO and then negotiate direct with the council. Being keen to not be seen as attempting to acquire the house at less than its market value, an offer was made to the council after the CPO was confirmed in the sum of £125,000. An agreement was drawn up at that figure and signed and sealed on 13 August 2013 with an anticipated date of entry for the council of 18 September 2013, and a requirement for the transfer to the Rodwells to be effected within a further 28 days – but further problems arose which we have recorded in our summary of the facts.

57. Since the house was cleared (much of that work having been done by the Rodwells at a cost to them of over £7,000), and occupation was eventually taken, Professor Rodwell said that much more damage was found than had been apparent from the necessarily curtailed inspections that had previously been made. He accepted that further problems had been anticipated and that he had not commissioned an independent detailed structural survey prior to the purchase eventually going ahead – any surveyor would not have been able to see much of the structure in the same way that he had not been able to. It was not until July 2014 that the property was clear enough for surveyors to come in and provide full plans and specifications for the planned works that included an extension to the rear to enable the construction of a properly sized kitchen and dining area, the original kitchen within the main house (being secondary to the main domestic offices that had been in the adjacent cottage) being no larger than a scullery.

58. Professor Rodwell said that the worst of the additional problems was the extent of dry rot – it was “absolutely everywhere” including behind plaster wall finishes and even in the

massive oak beams supporting the upper floors. Those oak beams had also been virtually destroyed in parts by death watch beetle. With the property having been neglected for some four decades since being acquired by the claimant's husband, he said that "this is one of the worst cases of dereliction suffered by a Listed Building, through wanton neglect, that I have encountered in my professional career."

59. He then went on to describe in considerable detail further background and history that was revealed by the investigations and research, and provided details of the works of renovation and repair that he was undertaking (under his own project management), all in accordance with the Listed Building Consents that he had obtained by July 2015 (with overwhelming support having been shown, and no objections having been raised to any of his proposals, by local residents or the council). The extent and enormity of these works were apparent when inspecting the house, cottage and grounds following the hearing.

60. As to costs, Professor Rodwell said that he had initially anticipated they would eventually add up to between £750,000 and £800,000 exclusive of VAT (for which he was not registered) and professional fees (he would be undertaking the project management himself). However, once the property had been cleared and opening up could take place, the true extent of structural failure became clear and his estimate for the restoration cost became "about £1,000,000." By the time of the site visit, with works less than 50% complete, they had already amounted to £430,000. It was now anticipated that a further £1.1 million would be required to finish it off to a good but not exceptional standard. With total costs therefore projected to be around £1.5 to £1.6 million, the purchase price of £125,000 now appeared high, he said.

61. **Mr Stephen Heywood** is the Historic Buildings Officer for Norfolk County Council. He produced a brief witness statement outlining the history of the subject property, and confirmed that it had been defined as a historic building at risk for many years. His statement included a number of historic photographs showing the property before the deterioration had commenced, together with a number taken between 1990 and 2014 and at the time of his only internal inspection on November 2001 showing how it had been allowed to fall into a state of almost terminal decline. He said he was unable to see much inside due to the fact that it was being used as a furniture repository. However, it was evident that many of the floors had rotted due to the severe rainwater ingress and some of the dormers had been removed and tiled over presumably due to the deterioration that had occurred to them. He said the adjacent cottage and outbuildings were "on the point of becoming ruinous."

62. **Mr Stuart Ashworth** MRTPI (Hons) is Assistant Director – Environment and Planning at the borough council and produced a statement setting out the planning position as at the valuation date. He confirmed the relevant local and national policy framework (to which we have already referred in paragraph 26 above). He said that under the National Planning Policy Framework ("NPPF") published in April 2012 sustainable development is at its core and great cognizance is taken of the historic environment and historic buildings in particular. Under the local planning framework Core Strategy adopted in 2011 there was no specific allocation for development within Northwold under the Key Rural Service Centre provisions.

63. It was his view that further subdivision of the site to provide an additional dwelling on the brown land would not be supported. It would be considered to be harmful to both the setting of the listed building and to the conservation area in general and would be contrary to the statutory duty to preserve and enhance the setting of such an important heritage building. Further, despite the fact that there had previously been a vehicular access to the rear off School Lane, a new application would be required, and he thought that the current requirements for visibility splays could not be achieved. The need to reduce the height of the rear wall would also be an issue.

64. There would also be access problems if there were to be a proposal to convert the cottage adjoining The Manor House into a separate residential unit and the County Council, which has been consulted over the issue, has indicated it would resist any intensification in use of the existing access off the High Street. Finally, there are also a large number of trees on the land (which are protected in conservation areas), and their existence would provide a further constraint to development. Given all these constraints in terms of form and character, amenity, access and trees, Mr Ashworth considered there was no potential for a further residential unit at the rear, and only very limited potential for the main property and cottage to be formally subdivided.

65. **Mr Tony Saffery** BSc (Hons) MRICS, a partner in Strutt & Parker LLP in Guildford, is a chartered building surveyor who specialises in design and specification for both new and period residential property, with a particular emphasis on the repair, renovation and extension of historic buildings. He deals with 15 – 18 projects a year where costs of works range from £250,000 to £20 million. Having been asked to provide an opinion of the construction costs both to satisfy the Repairs Notice and to refurbish The Manor House to make it habitable, he said he analysed the costings that had been prepared for what he described as two similar building projects with which he had been involved and which were completed in 2012 and 2013. The first was the conversion and refurbishment of a substantial Queen Anne period country house in Kent with principal accommodation extending to some 1,800 sq m (19,300 sq ft) together with a large indoor swimming pool complex and extensive grounds. The construction rate applied was £4,832 psm (£449 psf) giving an overall project cost (exc VAT) of £7.8 million. The second was an even larger new build replacement country house in Hampshire totalling 2,100 sq m (22,600 sq ft) with a construction rate of £3,959 psm (£368 psf). The property also included a new swimming pool complex and the total construction cost amounted to approaching £8.3 million. Both of these properties were constructed using a main contractor and the cost analysis included the contractor's overheads and profit calculated at 6.5%. The Manor House, by comparison, was, at the valuation date, according to the plans provided by Professor Rodwell, some 475 sq m (5,112 sq ft).

66. Mr Saffery said he inspected it on 10 December 2015 by which time restoration and extension works were well underway, but the property remained uninhabitable. The adjacent cottage could not be inspected at the time, and the costings produced were for the restoration of the main Manor House alone. He said he had also not made allowance for any works to the gardens or grounds, but there were allowances for such works in the two comparables to which he referred. No allowance was made for VAT (which he agreed could increase costs by between 10 and 20%), contingencies or professional fees.

67. Mr Saffery said he also consulted the BCIS Construction Cost Index in order to discount current rates back to the third quarter 2013. He assessed the cost of complying with the provisions of the Repairs Notice at around £515,000. The cost of making the property habitable (including the Repairs Notice works) would be £1.1 million for a “basic” finish, £1.2 million for “good” and up to £1.6 million for “excellent.” To reach these figures, he said that the average of the rates for his two quoted comparables was £4,160 psm (£386 psf) but in the light of the construction complexity and geographical location of the Manor House he had reduced this (for a “basic” specification) to £2,350 psm (£218 psf) which was supported, he said, by the August 2013 BCIS figures being above “upper quartiles” of £1,844 psm (£171 psf) but well below the “highest” costs (£3,985 psm or 370 psf). It was accepted in cross-examination that his only two comparables were vastly different in terms of size and facilities (the subject property has no swimming pool complex, lift or groundwater heat pump installation). The analysis of the figures for those properties was higher even than the BCIS “highest” rates of £3,985 psm (£370 psf).

68. Mr Saffery said that his estimates were his opinion based upon what he had seen, and acknowledged that he had not provided a fully costed bill of quantities as he had only been instructed to provide an outline cost estimate “at this stage.” It was put to him that some of the costs, such as those for securing the site, scaffolding and repairs to the chimneys and parapets appeared exceptionally high, but he insisted those were appropriate. He accepted however that he had not made any allowance for the money expended by the claimant in having the roof and dormers repaired, and whilst it appeared that they had not been to a good standard, he acknowledged that at least a percentage of those costs could have been removed from his estimated costings.

69. **Mr Russell de Beer** is a chartered valuation surveyor, and a partner in Strutt & Parker LLP’s Norwich office specialising in the valuation of residential property and management of estates for private clients. He received instructions from the council in April 2015 to provide his opinion of the value of the subject property in its condition as at the valuation date, and to assess the value assuming the requirements of the Repairs Notice had been complied with, and the property renovated and modernised into a habitable state. The council advised in their instructions that the property had not been formally marketed prior to the sale to Professor Rodwell. Mr de Beer carried out an inspection in May 2015, by which time the property had been cleared and the renovation works had commenced. The cottage/stables, he said, could not be inspected internally because they remained in an unsafe condition. Although the house was not in the same state as it was in September 2013, he said he had been provided with a comprehensive set of photographs taken at that time together with Professor Rodwell’s documentation detailing the then condition of the house and a schedule setting out the works that had been undertaken since.

70. Assessing the value at 13 September 2013 in accordance with the RICS Appraisal and Valuation Standards definition of Market Value which, he said, was consistent with the requirements under section 5(2) of the Land Compensation Act 1961, Mr de Beer said that in his opinion it was worth between £35,000 and £65,000 and that in restored condition would be between £425,000 and £475,000. In arriving at these figures, he considered the planning situation and background, the local and global economic circumstances at the time as it related to the housing market, and comparability to other properties either sold around the relevant

time, or which had been on the market. He had also been provided with a copy of the valuation report that had been prepared for the council by Bedfords, local estate agents, in December 2011.

71. He was particularly critical of that report and did not agree with their assessments of value either in its derelict state, or as modernised. The valuation was carried out some 20 months before the valuation date and stated that the residual method was the ‘most appropriate’ method to use. Whilst that was an option, and could effectively be used as a cross-check to figures arrived at by the comparables method, there was no breakdown as to the calculations – only, and arbitrary, reference to BCIS renovation costs tables, which he thought were in any event not best suited to assess rebuild costs of listed buildings. He also took advice from architects and developers. Mr de Beer believed that there was also an error in the assessment of the reduction in renovation costs if the works were to be carried out directly by the owner if he was a developer or tradesman. As to comparables, whilst the report said they had been considered in assessing the “as modernised” value, there were no references to any specific transactions upon which their opinions were based.

72. Considering his own research into the market, Mr de Beer said that Linden Cottage was the best available comparable as it bore many similarities to The Manor House and was right next door, although he accepted it was very much smaller and had been fully modernised. Acknowledging that it had not been sold despite two separate periods of marketing, he said that if an identically located house in fine condition did not sell for £400,000, it proved that the subject property in appalling order would have to be very substantially less, particularly bearing in mind how much needed spending on it. With The Manor House being (with its cottage and outbuildings) almost twice the size of Linden Cottage, Mr de Beer was asked how it could possibly only have a value of just over the asking price for Linden Cottage of £400,000 when modernised. In response he explained that Northwold was not one of the more popular Norfolk villages, being in the south-west quadrant of the county, on the edge of the fens and close to a number of RAF bases. It therefore had a ceiling on values and he said he was unaware of anything there having sold at the levels that were suggested by Bedfords. On being advised that a property had indeed sold at £1.9 million in February 2010, he said that it was very different, being a ‘mini estate’ with over 40 acres and could not therefore be considered comparable.

73. The George and Dragon former public house, also in Northwold was again much smaller than both the subject property and Linden Cottage, was not listed and in a less attractive location. It was sold in October 2013 for £200,000 and whilst in generally better condition was in need of total modernisation into a private family house. That sale, he said, demonstrated that if a property that required less expenditure had sold for that sum, it proved that The Manor House with its massive potential costs, must have been worth very much less and not, as Mr Morgan had suggested, very much more.

74. West End Manor, also at the far end of the High Street but in a generally more attractive setting than the George and Dragon, was also said to be a good comparable. It is approximately 2/3 the size of the subject property, of Georgian origin and imposing in appearance. It has a good ¼ acre garden and outbuildings and has been significantly extended (to provide a linked

annexe) and improved. Although it has a partially shared entrance, and is not detached, it has extensive accommodation which would appeal to a not dissimilar market. It was offered in 2014 at an asking price of £550,000 but was subsequently withdrawn as it failed to sell. This demonstrates clearly, he said, that there is a limited market for large houses in excellent condition in this village and proves that The Manor House could not possibly be worth £800,000 or more if modernised to the same standard.

75. Winyards in Northwold is a large modern detached 5 bedroom house approached over a long drive, has the benefit of a range of outbuildings and 21 acres of paddocks. It sold in October 2014 (by which time, according to the Halifax House Price Indices, prices had risen steadily since the valuation date) for £420,000 against a guide price of £600,000. Assuming the land to be worth in the region of £6,000 per acre for potential equestrian use, this brought the value of the house down to £294,000.

76. As to the wider area, Mr de Beer referred to two very large (7 bedroom) properties in Thetford, which sold in March and September 2013 for £285,000 and £295,000 respectively. They were larger, were habitable, and whilst located in a town rather than a village, each enjoyed a similar street scene to the subject property. Further properties in Saham Hills and Sporle, he said, provided similar support for his conclusion that, taken together, all these comparables prove that Mr Morgan's assessments for the subject property were inaccurate and unsubstantiated.

77. As to Beech House Swaffham, which Mr Morgan considered provided the best support for his views, Mr de Beer said that whilst he accepted it bore many similarities to The Manor House in terms of its age and character and its grounds, it totally failed to compare due to the fact it was in Swaffham town centre where there were excellent local facilities within walking distance. It was somewhat larger and was habitable as it had been modernised. It enjoyed a pleasant setting within its own grounds although the location was quite noisy as it was in a corner position abutting two busy roads. All in all, there were too many differences for it to be considered comparable.

78. Mr de Beer pointed out that the layout of the accommodation within the main house was such that it would not be possible to provide the principal bedrooms with en-suite facilities – a factor demanded by the majority of purchasers of this type of property.

79. Finally, Mr de Beer referred to the Tribunal's decision in *Hemingby Agricultural Traders Ltd and Another v East Lindsey District Council [2010] UKUT 390 (LC)* where, in circumstances similar to this case, the council compulsorily acquired a Grade II listed building that the owners had failed to maintain and was in poor repair. The purchaser spent in excess of £1,000,000 "to adhere to the planning permission" of which some £750,000 related to the building project itself. Once completed, the development was sold for £212,000. He said that whilst as a stand-alone development the project had been carried out at a substantial loss "there were reasons and justifications for individuals and organisations to take on these projects and, as in that case, there was an underlying value. The Tribunal determined the compensation at £32,500.

80. Mr de Beer said that whilst The Manor House would also result in a substantial loss if it were ever to be sold, there is still a price that someone will be prepared to pay – as Professor Rodwell did.

Discussion and conclusions

The Law

81. In his opening skeleton counsel for the claimant did not anticipate any controversial points of law arising and such has proved to be the case. Section 47(2) of the 1990 Act provides that the Acquisition of Land Act 1981 applies to compulsory acquisition made (as in the present case) under section 47. By section 4 of the 1981 Act, the Land Compensation Act 1961 has effect for the purpose of assessing compensation following a compulsory purchase. Section 5 of the 1961 Act provides that compensation in respect of any compulsory acquisition is to be assessed in accordance with the following six rules of which only the second (in subsection 5(2)) is of relevance for the purposes of the present case: “The value of land shall ... be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise”.

The values

82. We consider first the condition of the subject property at the valuation date and the likely costs of repair. As to its condition the evidence could not have been clearer. It was obviously in a state of near total dereliction and the restoration and renovation project would have been seen by anyone as a daunting and potentially extremely expensive project. In assessing what those costs were likely to amount to, we agree that the potential purchaser would have been unlikely to have gone to the lengths of obtaining a fully costed specification of works. Indeed, that exercise would not have been physically possible owing to the constraints on inspection as described to us. We do think, however, that in the light of the potential magnitude of the project, it would have been expected that the prospective buyer would have obtained the advice of someone like Mr Saffery rather than, as suggested by Mr Morgan, to have simply extracted figures from the BCIS tables and loaded them somewhat to take account of the risks.

83. However, regarding the exercise undertaken by Mr Saffery, we are troubled first by his reliance upon two clearly inappropriate comparables. As he accepted in cross-examination, they are vastly different to the subject property, both being effectively new builds of houses that are between three and four times the size of The Manor House, include many aspects that were not applicable including lifts, the provision of swimming pools/leisure complexes, significant external works including roadways and they were developed by a main contractor. To reflect the differences between these comparables and The Manor House refurbishment, Mr Saffery made a blanket reduction to the average cost per square metre of around 45%, but he did not consider each cost line individually. Therefore, for example, his cost schedule for the subject property still included figures for swimming pool, lifts and roadworks together with the 6.5% OH&P cost applicable where a single contractor basis is used.

84. Whilst the figure he chose to represent the subject property's refurbishment costs (£2,350 psm) does, in our judgment, compare favourably with its appropriate position in the range of figures in the BCIS tables, we are concerned that Mr Saffery's basic methodology, as described above, is flawed and his arrival at that point seems to be more by luck than judgment. Some of the sums he has included, as pointed out by the claimant, do appear to us to be overstated; and if he had "stood back and looked" before committing to an overall figure based almost precisely on the circumstances of two highly inappropriate comparables, we think he may have reconsidered, and would probably have quite significantly reduced, his estimates. One clear example of this is his estimate of costs for external walls at £153,000. This is 14.6% of the total expenditure before OH&Ps, *precisely* the same as for both of the comparables – one of which was a complete new build. This simply cannot be right, and we therefore attach little weight to his analysis on this basis.

85. We are also concerned that Mr Saffery has totally ignored the fact that a prospective purchaser would need to consider the amount of money which he would have to expend on substantially rebuilding and refurbishing the cottage in addition to the costs of renovating the main house. So, whilst we agree with the claimant's submissions that many of the costs in Mr Saffery's schedule appear overstated, and he has not allowed any discount for the roof works already done, he has failed to consider what in reality is a very significant factor in the required exercise. Neither has he made any allowance for VAT: and he has not considered professional fees other than the building contract basis which many would deem inappropriate for a project of this nature. All in all, we are satisfied that, in the light of the advice he would have sought, the purchaser would have anticipated costs, as Professor Rodwell did, of at least £800,000 and, including the cottage/stables, VAT and fees, probably nearer £1,000,000.

86. We consider that Mr Morgan's estimate of the cost of repairs was unscientific and based upon figures which, in the light of the obvious complexity and importance of complying with Listed Building requirements, were inappropriate amid the ranges set out in the published data. In our judgment no purchaser would have considered that he would have the slightest chance of carrying out a sufficient refurbishment to make the property into a habitable home to a standard which any potential occupier would expect for £500,000 to £600,000. Indeed, Mr Morgan accepted in cross-examination that he had underestimated the potential costs. Bedfords' estimate in 2011 was, we think, much nearer the mark.

87. As to whether or not the roof repairs undertaken upon Mrs Meredith's instructions would have served to reduce what a purchaser would estimate overall costs to be, we think that they would but only to a very limited degree and certainly not to the extent suggested by Mr Morgan. However, in the overall scheme of things, and in the light of the huge potential costs, we do not think that the fact that those works had been effected would make any difference to what a purchaser would have been prepared to pay for the property.

88. Turning now to the experts' valuation evidence, we agree with Mr Morgan that it is most likely that the cottage, and its potential, would be seen as an adjunct to the main house, particularly as the layout of The Manor House is such that, unless extended or linked in with the accommodation that the cottage could provide, its existing footprint was not conducive to providing particularly extensive or well laid out family accommodation. However, we do not

disagree that the cottage does also have some limited potential to perhaps be sold away or used as a letting opportunity especially if, as has indeed happened, an extension can be provided to the rear of the main house to give a larger and more appropriate kitchen and other domestic offices arrangement. We tend to agree that the local planning authority might have some difficulty resisting an application to remove any condition that the cottage had to remain as an adjunct to the main house, especially where the design and layout for the refurbishment and renovation of both is along the lines that are now actually occurring. We therefore do not demur from Mr Morgan's view that the cottage may have been considered to have some potential additional value by a prospective purchaser. However, in our judgment the suggested additional £50,000 for what is only a fairly remote chance (the intensification of use of the narrow access onto the High Street potentially being an insurmountable obstacle) is too high and we consider that a purchaser would not have valued the potential at any more than say an additional £25,000.

89. Regarding the brown land, whilst we accept Mr Morgan's view that the planning consent received for the development to the rear of Linden Cottage might initially be interpreted positively by a prospective purchaser of The Manor House, we think it most unlikely that planning consent would in fact be granted for a new dwelling on the brown land for three reasons. First, it is a virgin site, with no evidence of previous development on it, whereas the permitted residential element of the permission granted at Linden Cottage was in respect of the conversion of an existing structure. Secondly, the brown land is a relatively narrow strip which means that any building would have to be positioned close to the eastern boundary onto the two adjacent Church Lane cottages. Both of them are located very close to that boundary (no more than six feet away) and each of them has at least one principal window facing onto that boundary. Thus, we consider that the planning officer would deem the buildings too close, and that a new dwelling would have a severely detrimental effect upon the outlook from the cottages. Thirdly, we accept Mr Ashworth's argument that there would almost certainly be highways objections to the reinstatement of a vehicular access on to School Lane through the current rear boundary of the subject property. It was also suggested by the acquiring authority that the existence now of a relatively mature tree just inside the rear boundary may be a further reason for refusing access, but the site inspection revealed it to be far enough away from the point at which the access would be (the exact original location of the access having been helpfully pointed out by Professor Rodwell by his positioning of ranging rods at the appropriate points along the wall).

90. We think, therefore, that a prospective purchaser would not attribute any hope value to this part of the land for residential development. We also consider that, at the valuation date, he would think it unlikely that there would be much of an opportunity to obtain value from selling the brown land as additional garden land to the two Church Lane cottages. Whilst the acquisition of the relevant parts immediately behind those properties would undoubtedly enhance their value quite significantly by giving them a reasonable amount of rear garden that they do not currently enjoy, both of them are of unkempt appearance and they do not give the impression that their owners (if indeed they are owner occupiers) might have the means to enable a purchase, even in a fairly modest sum, to proceed. Further, we heard no evidence that any approaches had been received by either the claimant or by Professor Rodwell. Even were such contact to have been made, we are of the view that the costs of enclosing the land in similar fashion to what has occurred to the blue land by reinstatement of what appears, from its remains, to have originally been a fine stone wall, would have been prohibitive. We consider it

much more likely that the prospective purchaser of The Manor House would deem that area to be an important part of its garden and would probably wish to retain it, especially as the blue land, although at the valuation date part of the freehold, could not be used as part of the subject property's garden because it was fenced off and let to a neighbour.

91. As to the sale of the blue land, we note that Mr Morgan considered the price of £20,000 was good proxy for the 0.12 acre behind 59 School Lane, and that the council have accepted that view. However, in our judgment, due to the very small area of garden enjoyed by 59 School Lane without the area occupied under licence, the chance to acquire the freehold of it would have been significantly more valuable (even considering the question of marriage value) were it not for the fact that the purchaser was required by Professor Rodwell to expend a large amount of money on what is very high quality and high boundary wall.

92. The result of Mr Morgan's piecemeal approach was, as we have said, to apply a figure of £250,000 to The Manor House and the main part of the garden, with an extra £50,000 for the cottage, £40,000 for the brown land potential and £20,000 for the blue land giving an overall figure of circa £360,000 in its condition as at the valuation date with an end value when restored and renovated of approaching £1 million. Mr de Beer was arguing for a nominal value of £35,000 to £65,000 in its derelict state, with a modernised value of £425,000 to £475,000.

93. There was a general consensus between the valuation experts that this is a fairly unique property, and it was clear that they both struggled to find houses that were indeed comparable. Each of the comparables they did produce required substantial adjustment to take account of aspects such as location, size and condition; and it has not been easy for us to find definitive support for either Mr Morgan's or Mr de Beer's conclusions.

94. We agree with Mr Morgan that Beech House in Swaffham was the best comparator in terms of period, style, size and general ambiance. If The Manor House were to have been modernised and habitable, we think it would have appealed to the same type of prospective purchaser i.e. a large family, perhaps with elderly relatives, who could utilise the secondary accommodation. However, we tend to concur with Mr de Beer's opinion that Swaffham is much better served for facilities; and whilst the location might have been somewhat noisier, we do think that it would enjoy a premium in value terms over Northwold.

95. Linden House and West End Manor on the other hand are the best comparables in terms of location, but they each differ in a number of ways and, of course, neither were sold and therefore do not provide direct evidence of market value other than suggesting that the asking prices were optimistic. However, in our view with the subject property modernised (to include the cottage) it would have been a far better proposition than either of those and would have achieved a significantly higher value.

96. Mr de Beer suggested that the George & Dragon in Northwold proved that The Manor House must have been worth much less, whereas Mr Morgan said that it proved it was worth much more as both required complete renovation and the subject property was much bigger and better located and with more potential. We much prefer Mr Morgan's view on this and are

surprised at Mr de Beer's suggestion. The market for the George & Dragon would be significantly different and the potential much less. The two are wholly incomparable, and Mr de Beer's reasoning just does not make sense. We also found Mr de Beer's suggestion that there was a cap on values in Northwold, such that nothing could possibly be worth £800,000 or more, quite astonishing. The fact that nothing had sold at those levels for some years did not prove his point. In any event, evidence was given at the hearing of a property in Northwold that had sold for £1.6 million at around the relevant time, although we accept that that was a very different kettle of fish.

97. Winyards, whilst having land, was a very different type of property and was in a less desirable location within the village. All of the other comparables referred to were in our judgment of little assistance, either being too far away or too different.

98. Doing the best that we can from the evidence that was before us, and from the Surveyor Member's inspections of the relevant comparables, we conclude that the value of The Manor House, cottage and grounds (including the blue land) if modernised (but not extended to the degree undertaken by Professor Rodwell) would have been in the region of £700,000 to £800,000.

99. As to its value unmodernised and virtually derelict, Mr Morgan expressed the view that, had they been made aware of it by proper marketing, there would have been other purchasers of Professor Rodwell's ilk who would have bid for the subject property, and who would have been prepared to buy it despite the potential enormity of the renovation and refurbishment task. No evidence was produced to support such a conclusion; and, in our judgment, the chances of finding someone who had the interest, drive and determination, along with the financial wherewithal shown by the Professor, would have been remote to say the least, especially when taking into account the fact, as we have found, that there was absolutely no chance of the completed property being worth anywhere near what the whole project would have been forecast to, and indeed will in reality, cost.

100. Whilst it is a fact that the property was not *fully* exposed to the market (such as by listing with an estate agent), expressions of interest were sought through the local press and the house was listed in various appropriate publications as described by the council. We are inclined to the view that the council was extremely fortunate that Professor Rodwell came along; and we are not at all surprised that the council were keen to treat with him, particularly after their experience with NHBT, another potentially ideal purchaser, who had withdrawn because the project did not make financial sense. To have someone come forward with the background of Professor Rodwell must have been seen as manna from heaven and, as custodians of the public purse, we condone entirely the council's actions in concluding the sale at £125,000.

101. That figure, in our judgment, provides the best and most reliable evidence of the value of the subject property at the valuation date. The price was agreed by a willing buyer who had undertaken a considerable amount of research into the property and who unquestionably "knows his stuff". Despite not having an independent structural survey (and we accept his reasons for not doing so), he was fully aware of the potential pitfalls; and he had estimated

likely costs at what we conclude was an appropriate initial broad estimate (c. £800,000) excluding VAT and professional fees knowing that that figure would probably increase. He was aware that those costs would undoubtedly exceed the open market value when the renovation was complete, but nevertheless he was prepared to pay the price. Although he said that, in the light of what he found subsequent to the purchase, he thought £100,000 was more appropriate, we are satisfied that the price he paid was not excessive and, as we have said, it reflected his views at the time after having reduced his earlier offers for the reasons he gave.

102. As to the evidence relating to the likely purchaser, we are of the view that the market would be extremely limited, and would exclude any speculative developer as there was no profit potential. There are not many people around like Professor Rodwell: but we do agree that there might have been a very small number of families with the requisite financial wherewithal who might have visualised this as a potentially long term opportunity to create the home of their dreams where the question of a financial return would be secondary.

103. It is clear from our conclusions that any purchaser would expect no profit to be achievable from his labours even if he had been able to acquire the property for £1. Nevertheless, as the Tribunal found in *Hemingby Agricultural Traders* (although the circumstances there were very different), there will always be a figure that someone will be prepared to pay.

104. In the light of our conclusions, we determine compensation in the sum of £125,000.

105. This decision determines the issues in this reference and is final on all matters other than the question of costs. The parties may now make submissions on costs in accordance with the details in the letter which accompanies the decision.

DATED 12 January 2017

David R. Hodge

HH Judge David Hodge QC

A handwritten signature in black ink that reads "Paul R Francis". The signature is written in a cursive style with a large initial "P" and "R".

Paul R Francis FRICS

Re-issued on 16 January 2017 due to further typographical amendments found.

ADDENDUM ON COSTS

106. The Claimant submits that the Acquiring Authority should be liable for her costs incurred in connection with this matter prior to 26 August 2015. She acknowledges that the Acquiring Authority made an unconditional offer to pay £125,000 by way of compensation in a letter to the Claimant's solicitors dated 26 August 2015. That was the sum at which we determined compensation. The Claimant therefore invites the Upper Tribunal to order the Acquiring Authority to pay the Claimant's costs incurred up to 26 August 2015, to be assessed by the Tribunal if not agreed by the parties.

107. The Acquiring Authority invites the Tribunal to order the Claimant to bear her own costs of the reference and to pay the Acquiring Authority's costs in so far as they were incurred after 15 April 2015, to be assessed by the Tribunal if not agreed by the parties. The Acquiring Authority relies upon an earlier unconditional offer of compensation in the sum of £125,000 contained in a letter from its lawyers, NP Law, dated 15 April 2015. That letter had reminded the Claimant of the costs implications of section 4 of the Land Compensation Act 1961. The Claimant has not accepted that offer; and it was withdrawn on 4 June 2015. On 28 July 2015 the Claimant had made her reference to the Upper Tribunal under section 5 of the 1961 Act seeking compensation of approximately £425,000. On 25 August 2016 the Acquiring Authority had served its response to the reference indicating that the value of the Manor House on the date of acquisition was no more than £125,000; and on the following day its lawyers had made the Claimant a second unconditional offer of compensation in the sum of £125,000 and had again drawn the Claimant's attention to section 4 of the Act. The Acquiring Authority had never withdrawn that second offer, which had remained open to the Claimant throughout the proceedings; but she had never accepted it and, at the hearing, she had sought compensation in the sum of £360,000.

108. The Acquiring Authority submits that the Claimant had had the opportunity of avoiding the costs of any reference to the Upper Tribunal by accepting the Acquiring Authority's pre-reference and unconditional offer of compensation. She had chosen not to take that opportunity and instead she had issued proceedings in July 2015 for what was, in all the circumstances, said to be the fanciful sum of £425,000. From 26 August 2015 she had had a further, and unlimited, opportunity to spare herself and the Acquiring Authority the costs and inconvenience of litigation by accepting the Acquiring Authority's second and unconditional offer of £125,000. Again she had chosen not to take that opportunity and instead had pursued her claim for what, by the time of the hearing, was a lower but nonetheless fanciful sum of £360,000.

109. Ultimately, following the hearing, the Claimant has failed to do any better than the Acquiring Authority's offers; and the Tribunal had condoned entirely the council's actions in concluding the sale to Professor Rodwell at £125,000. In the circumstances, section 4 (1) (a) of the 1961 Act is said to apply and, unless for special reasons, it thinks it proper not to do so, the Tribunal is required to order the Claimant both to bear her own costs of the reference and to pay those of the Acquiring Authority, in so far as they were incurred after its offer was made. To that end, the Acquiring Authority submits that: (1) the relevant date for the purposes of

section 4 (1) (a) is 15 April 2015, being the date on which the Acquiring Authority had first made the Claimant an unconditional offer of £125,000; (2) thereafter the Claimant had ample opportunity – a period of some seven weeks – in which to consider and accept the offer before it was withdrawn; (3) it matters not that, in June 2015, the Acquiring Authority had withdrawn its offer because, by her subsequent conduct and, in particular her failure to accept the Acquiring Authority’s second (and identical) offer of compensation, the Claimant had demonstrated unequivocally that she would not have accepted the first offer had it remained open; and (4) there are no special reasons why the Claimant should not pay the Acquiring Authority’s costs. On the contrary, her decisions not to accept the Acquiring Authority’s first or second offers and, indeed, to pursue compensation in a wholly unrealistic sum were patently unreasonable and have put the public purse to significant legal costs. The Acquiring Authority should, it is submitted, be entitled to recover that cost from the Claimant.

110. In her counter-submission on costs, the Claimant contends: (1) that given the effect of section 4 (A1) and (1) of the 1961 Act, section 4 (1) was not engaged at the time of the first offer because there was no reference to the Upper Tribunal until 28 July 2015; (2) at the date of the reference there was no offer for the Claimant to accept because the first offer had been withdrawn on 4 June 2015; and (3) the Acquiring Authority’s submission that the Claimant would not have accepted the first offer had it remained open is (a) no more than conjecture and (b) does not fairly reflect the facts because at the same time as withdrawing the first offer on 4 June 2015 the Acquiring Authority had made an advance payment of £67,500, being 90% of £75,000, the amount it claimed the property was worth at that stage. Accordingly, at the time the reference was made, not only was there no offer open to the Claimant to accept, but the Acquiring Authority’s own stance on value was that the property was worth only £75,000. For these reasons, it is said that the appropriate date from which the Claimant can and should be held liable under section 4 (1) is the date of the second (and post-reference) offer dated 26 August 2015.

111. The Claimant also submits that unless costs are otherwise agreed, this is a case where detailed assessment would be appropriate on the standard basis but disallowing the whole or the greater portion of the costs of the Acquiring Authority’s buildings expert, Mr Tony Saffery. It is said that his evidence did not assist the compensation process. It was based entirely on inappropriate comparables and in the end was replaced by figures from the BCIS tables which were requested and provided during the hearing. The Claimant submits that Mr Saffery’s report and presence at the hearing were unnecessary and she ought not to be required to pay for them. We note from the Acquiring Authority’s updated schedule of costs that the costs claimed for Mr Saffery amount to over £18,000 (plus VAT).

112. On the issue as to the appropriate date from which the Claimant should be held liable for the Acquiring Authority’s costs under section 4 of the 1961 Act, we prefer the submissions of the Acquiring Authority to those of the Claimant; and we therefore order the Claimant to pay the Acquiring Authority’s costs so far as they were incurred after 15 April 2015, to be assessed on the standard basis if not agreed.

113. Section 4 of the Land Compensation Act 1961 provides:

“Costs

4. --- [(A1) In any proceedings on a question referred to the Upper Tribunal under section 1 of this Act –

- (a) the following subsections apply in addition to section 29 of the Tribunals, Courts and Enforcement Act 2007 (costs or expenses) and provisions in Tribunal Procedure Rules relating to costs; and
- (b) to the extent that the following subsections conflict with that section or those provisions, that section or those provisions do not apply.]

(1) Where either---

- (a) the acquiring authority have made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by the Upper Tribunal to that claimant does not exceed the sum offered; or
- (b) the Upper Tribunal is satisfied that a claimant has failed to deliver to the acquiring authority, in time to enable them to make a proper offer, a notice in writing of the amount claimed by him, containing the particulars mentioned in subsection (2) of this section;

the Upper Tribunal shall, unless for special reasons it thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as they were incurred after the offer was made or, as the case may be, after the time when in the opinion of the Upper Tribunal the notice should have been delivered.

114. We do not consider that the wording of sections 4(A1) and (1) prevents the Acquiring Authority from relying upon an unconditional offer in writing made before any reference to the Upper Tribunal. Nor does the wording require the offer to have remained open for acceptance as at the date of the reference. Section 4(A1) introduces the power to award costs under section 4(1) on a reference to the Upper Tribunal whilst section 4(1)(a) is engaged where the acquiring authority have made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by the Upper Tribunal to that claimant does not exceed the sum offered and applies to costs incurred after the offer was made. Neither subsection says anything about the need for proceedings to be extant at the date of the offer, or about the need for any pre-reference offer to remain open for acceptance at the date of the reference. Nor do we consider that there is there any policy reason to import any such requirements into the legislation. The rationale underlying section 4(1)(a) is to encourage the acceptance of sensible offers of compensation; and that rationale applies just as much before as after any reference to the Upper Tribunal. Were it necessary to do so – and we do not consider that it is – we would accede to the Acquiring Authority’s submission that the Claimant would not have accepted the first offer had it remained open for the reasons advanced by the Acquiring Authority, which are cogent and entirely consistent with the conduct and attitude of the Claimant throughout this reference.

115. However, we accept the submissions advanced by the Claimant in relation to the costs attributable to Mr Saffery’s evidence. These should be disallowed in full. We derived no real benefit from his evidence and there are therefore special reasons why the costs attributable to this evidence should be disallowed. We see no reason why they should fall on the Claimant.

116. For these reasons, we therefore determine:

(1) that the Claimant should pay the Acquiring Authority's costs so far as they were incurred after 15 April 2015, to be assessed on the standard basis if not agreed; and

(2) that the costs attributable to Mr Saffery's evidence should be disallowed in full.

DATED 10 April 2017

David R. Hodge

His Honour Judge David Hodge QC

A handwritten signature in black ink that reads "P R Francis". The signature is written in a cursive style with a large initial 'P' and 'R'.

P R Francis FRICS