LANDS TRIBUNAL ACT 1949. ACQ/110/1998

The Lands Tribunal : Decisions

LANDS TRIBUNAL ACT 1949
ACQ/110/1998

COMPULSORY PURCHASE - compensation - woodland adjoining motorway and screening claimants' remaining land, part of which had planning consent for one house - whether value of land taken should reflect an unwilling vendor and whether amenity valuation of trees by reference to 'Helliwell system' relevant in determining value - extent of compensation for severance and injurious affection - compensation for claimants' time spent on claim - compensation awarded £26,600.

IN THE MATTER of a NOTICE OF REFERENCE BETWEEN

JOHN BLAKEY LINDSAY and MARGARET LINDSAY (claimants)

and

HIGHWAYS AGENCY (acquiring authority)

Re: Approximately 3,405 square metres of woodland adjacent to M1 southbound carriageway and north of Thorpe Lower Lane, Robin Hood, Rothwell, Leeds, West Yorkshire

Before: N J Rose FRICS

Sitting in public at Barnsley County Court on 12 and 13 July 2000

Mr J B Lindsay, one of the Claimants, for the Claimants
Timothy Mould, instructed by the Treasury Solicitor, for the Acquiring Authority

The following case is referred to in this decision:
R A Vine (Engineering) Ltd and Another v Havant Borough Council [1989] 39 EG 164

DECISION

1. This is a reference to determine the compensation payable for the freehold interest in a belt of scrub and woodland of approximately 3,405 square metres adjacent to the south-bound carriageway of the M1 motorway and north of the A654 Thorpe Lower Lane, Robin Hood, Rothwell, Leeds, West Yorkshire ("the subject land"). The land was compulsorily acquired under the M62/M1 motorway (Lofthouse Interchange Diversion) Compulsory Purchase Order (YHCPD No.2) 1994 ("the CPO"), made on 30 March 1994 and confirmed by the Secretary of State for Transport on 29 April 1994. Notice to treat was served on 30 November 1995 and notice to enter was served on the same date. Possession was taken on 13 February 1996, which is thus the agreed valuation date. At the hearing the total compensation claimed was £71,223 and the acquiring authority's valuation totalled £23,600.

2. **Mr John Blakey Lindsay** appeared on behalf of himself and his wife, Mr Margaret Lindsay ("the claimants") and gave evidence. He also called Mr C D Collinson, BSc, FRICS, a partner in Messrs Vickers Orriss of Wakefield and head of that firm's professional department, and Mr A Armitage, NCHort, NDHt/Arb, an arboricultural consultant. **Mr Timothy Mould** of counsel appeared for the acquiring authority and called Mr P C G Rhodes, ARICS, based in the Harrogate office of the Valuation Office Agency and Mrs Christine Marsh, BA, a member of the Landscape Institute and an associate of Messrs BHWB Environmental Design and Planning

3. In company with representatives of the parties I inspected the subject land and certain other properties which had been put forward as comparable evidence on 8 August 2000.

Facts

1. From an agreed statement of facts and from the evidence I find the following facts:
   (1) At the valuation date the land within the ownership of the claimants comprised an L-shaped area of approximately 6 acres, covered by scrub and woodland and fronting the north side of Thorpe Lower Lane, an adopted highway.
   (2) The western boundary of the claimants' land comprised the southbound carriageway of the M1 Leeds-London motorway, being a post and four rail fence forming the motorway boundary. To the north the area comprised public open space and local authority housing adjacent to a disused mine shaft. Subsequent to the valuation date Barratt Homes Limited have carried out substantial residential development on the land immediately east of the claimants' land (22 units) and also on the opposite side of Thorpe Lower Lane (49 dwellings). The only building on the claimants' land was a block and tile store in dilapidated condition.

(3) There were no restrictions affecting the freehold title and all the claimants' land was vacant and unoccupied.
(4) The entire site was acquired by the claimants at public auction in 1989 for £31,000. Most was shown as green belt in the Leeds City Council Local Plan, but an area immediately north of Thorpe Lower Lane, towards the south-western corner of the site, was shown as white land. Outline planning permission was granted in 1990 for one 5 bedroom detached dwelling with an integral double garage, to be constructed within the area of white land ("the retained building plot"). Detailed permission was granted in 1993. In 1999 this consent was renewed until 13 April 2004.
(5) The subject land now forms part of the southbound slip-road, leading from the M1 to the M62. It is in an elevated position with a sound-reducing close-boarded fence, 1.4 metres high. This fence was constructed by the acquiring authority following representations from the claimants and others. The motorway is about 80 metres from the site of the proposed dwelling on the retained building plot. It was formally opened on 12 February 1999.
(6) There are no accommodation works to the land, as a post and four rail fence forms part of the motorway and will be maintained for the residue of the Design, Build, Finance and Operate contract for the next 26 years by Yorkshire Link Limited on behalf of the acquiring authority.
(7) In addition to screening which was formerly provided by the trees on the subject land, additional screening to the claimants' retained land was provided by trees on the highway embankment to a depth of approximately 20 metres. The effect of felling the embankment trees and those on the subject land has been to reduce the width of the screen to the west of the retained building plot by some two-thirds. In addition, there were originally 11 mature willow trees fronting Thorpe Lower Lane and adjacent to the motorway bridge abutment. Of these, eight were situated on the subject land and have been felled.
(8) The acquiring authority has offered to place five willow trees in the south-west corner of the claimants' retained land, close to the three remaining mature willows, together with twenty standard trees along the western boundary of the retained land. This offer has been declined by the claimants, partly because of the acquiring authority's insistence that the claimants undertake contractually to maintain the new trees for a period of 22 years. At the hearing the acquiring authority indicated that it was prepared to pay compensation to reflect the resultant maintenance costs. Its offer to plant 25 trees and to pay compensation for their maintenance will remain open for acceptance within a reasonable period, if this Tribunal decides that those trees will mitigate the claimants' loss to any extent. In fact, both Mr Collinson and Mr Rhodes agreed that the trees would reduce the claimants' loss by way of severance and injurious affection, although they disagreed on the extent of such reduction. The consequence of this agreement in principle is that the offer to plant new trees remains open.
(9) A concrete stairway with steel handrail has been constructed on the new motorway embankment to provide access for maintenance purposes to a telecommunications box alongside the motorway. This box provides a computer

link for motorway signage and other systems. The stairway overlooks the claimants' building plot. It was not shown on the plans submitted in connection with the CPO.
(10) The subject land was crossed by a Yorkshire Electricity overhead cable. The trees were subject to a Tree Preservation Order made by Leeds City Council in 1990.

Issues

1. It is agreed that the claimants are entitled to disturbance compensation of £190, being a fee of £95 paid for an arboricultural report and a similar fee paid to the Local Planning Authority in connection with the renewal of the planning consent in 1999.

2. The issues between the parties are as follows:
(1) What is the value of the subject land for compensation purposes and is expert evidence as to the amenity value of the trees on the land relevant in assessing that value?
(2) What compensation is payable to reflect damage by way of severance and injurious affection to the land retained by the claimants?
(3) What compensation is payable for the time spent by the claimants in preparing and negotiating their claim?

I was told that there was also an outstanding issue relating to the precise boundaries of the land taken, but that the parties were confident that it would be resolved amicably and therefore need not be considered by me.

The value of the land taken

1. Mr Rhodes' valuation of the subject land was £8,410, equivalent to £10,000 per acre. In arriving at this figure he had taken account of two sales of amenity woodland, both situated about 10 miles from the subject land. He had decided to value the subject land at a significantly higher price per acre than was paid on these sales, to reflect the location of the subject land adjacent to the claimants' site with detailed planning consent for the erection of a house, to which it would have provided a screen. In his view, the subject land gave added value to that building plot and this should be reflected in its value.

2. Mr Lindsay adopted a different approach. His base valuation was £23,537, equivalent to £7.50 per square metre. This figure was, he said,
"based upon our opinion that we are unwilling sellers of the land and that fraction of our land would never have been offered for sale on the open market."

1. In support of his valuation, Mr Lindsay referred to the decision of the Court of Appeal in another case concerning compensation for compulsory acquisition - *R A*

Vine (Engineering) Ltd and Another v Havant Borough Council [1989] 39 EG 164. In particular, he relied on the reference in that decision to the valuation approaches adopted by the two expert witnesses. The claimants' expert had suggested that planning permission for office development would reasonably have been expected to be granted, and on that basis he valued the acquired land at £30 per square metre. The acquiring authority's expert had considered that the land should be valued as part of a landlocked garden for which an appropriate price would be £5 per square metre.

2. In cross-examination, Mr Lindsay described his valuation of £7.50 per square metre as a "wild guestimate". It was based upon the assumption that the subject land was a bare site without trees or vegetation. He suggested that to this value should be added the value of the trees, assessed by reference to the evidence of Mr Armitage, who calculated their amenity value with the use of the Arboricultural Association's Helliwell system. On this basis Mr Armitage considered that the amenity value of the eight willow trees on the land taken was £13,824 and that of the remaining trees and woodland upon it was £3,672, making a total of £17,496. His written report also included an estimate of the cost of replanting all the trees on the subject land, but he acknowledged that this had been superseded by events and it was not relied upon by the claimants. In cross-examination, Mr Armitage agreed that his valuations constituted a financial appraisal of the effect of the trees, in terms of amenity, upon the public as a whole, although the public included the owner of the land upon which they stood.

3. The written report submitted by Mr Collinson did not quantify the value of the subject land. In oral evidence, however, he expressed the view that its value was £8,410, the same as Mr Rhodes' figure. He said that this valuation included the trees and woodland upon the subject land and their "amenity value by way of marriage value to the owner of the adjoining land."

4. The rules for assessing compensation in respect of any compulsory acquisition of land are set out in s.5 of the Land Compensation Act 1961. Rule (2) provides that: "The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise."

1. Mr Mould submitted that, since Mr Lindsay's valuation approach was based on the fact that the claimants were unwilling sellers, it was entirely misconceived. I quite agree. Although Mr Lindsay made it clear that he was aware of the statutory requirement to value on the basis of a willing seller, he nevertheless considered it appropriate to put forward a "wild guestimate" of the bare land value, reflecting the fact that the claimants were unwilling sellers. I obtain no assistance from his suggested value of £7.50 per square metre.

2. I would make two further observations about Mr Lindsay's approach to the valuation of the subject land. Firstly, the decision in *R A Vine* concerned an appeal against a decision of this Tribunal dated 11 December 1987, in respect of part of the rear garden of a house in Hampshire. Thus, even if opinions of value expressed by witnesses in one set of proceedings constituted admissible evidence in other proceedings, the valuations in *R A Vine* related to land in a different use, in a distant part of England, more than eight years before the relevant date. They are of no help in arriving at the valuation which I am required to determine.

3. Secondly, Mr Armitage readily accepted that his valuation approach was of no assistance in ascribing a separate value to the trees on the claimants' land independent of their value to the general public. There was no evidence that any public authority was in the market to purchase woodland of this nature for the public benefit, still less to pay a premium above normal market value in order to do so. It follows that, even if there were any merit in Mr Lindsay's two-stage approach to the valuation - the value of the bare land plus the value of the trees upon it - he has failed to produce any cogent evidence to assist with either stage.

4. Having dismissed Mr Lindsay's approach and evidence, I am left with that of Mr Rhodes and Mr Collinson. They agreed that the market value of the subject land was £8,410 and I accept their evidence.

Compensation for severance and injurious affection

1. Mr Rhodes assessed the compensation payable for severance and injurious affection to the claimants' retained land by reference to the reduction in the value of the building plot resulting from the loss of the subject land. He assessed the value of the plot before the acquisition at £60,000. He considered that the effect of the acquisition was to depreciate this value by £12,000, or 20 per cent of the before scheme value. In support of this opinion, he referred to nine compensation settlements, where land had been taken for highway purposes and the extent of the resultant depreciation in the value of the remainder had been agreed at between 7.5 per cent and 20 per cent of the pre-scheme value.

2. Mr Lindsay did not agree with Mr Rhodes' deduction of 20%, but he did not himself put forward an alternative figure. Mr Collinson's written report did not quantify this item of loss either. In oral evidence, however, he expressed the view that the building plot had been reduced in value by £15,000, or 25 per cent of the agreed pre-scheme value.

3. The adverse effects of the acquisition on the value of the building plot as summarised by the claimants are as follows:
(1) Reduced visual amenity, as a result of the loss of the trees and shrubs on the subject land and the motorway embankment.

(2) Increased noise, vibration and fumes, as a result of the new two-lane slip-road bringing motorway traffic closer.
(3) Loss of privacy and visual amenity resulting from the construction of the new concrete stairway on the motorway embankment.

1. I deal firstly with the loss of visual amenity resulting from the removal of trees. Mrs Marsh considered that the function performed by the remaining trees in screening motorway traffic after the acquisition differed little from the previous situation, despite the fact that the depth of trees had been substantially reduced. There were no evergreen trees along the western boundary of the building plot. The deciduous trees which originally existed provided a better screen in summer than in winter, as did those which remained. However, the remaining trees were so closely spaced that the lattice of branches still created quite a good screen even when they were not in leaf. She also thought that, although the road was now 20 metres closer to the plot than previously, any increased visual intrusion had been largely offset by the new close boarded fence erected adjacent to the motorway. This fence was less attractive than trees, but it nevertheless acted as a visual screen, hiding from view all vehicles using the motorway other than those which were particularly tall.

2. In the light of my site inspection, I consider that Mrs Marsh has significantly under-estimated the effect on the visual amenity of the retained building plot of the substantial reduction in the width of the tree screen, even taking the construction of the new close boarded fence into account. I accept Mr Lindsay's evidence that the visual amenity of the retained land has been adversely affected to a significant extent as a result of the acquisition.

3. In his closing submissions, Mr Mould suggested that there was no evidence of any change in the noise environment as a result of the roadworks. I do not agree. Although there is no evidence before me to suggest that the construction of the new slip-road to the M62 has increased the total traffic flow past the claimants' retained land, there was equally no suggestion that this flow has reduced. In the light of my inspection it is clear that - as one would expect - a significant part of the southbound motorway traffic now travels along the slip-road, rather than continuing along the M1. That slip road is 20 metres closer than the original motorway to the retained building plot. I consider it to be a reasonable inference that the noise from traffic using the slip-road is appreciably greater than it would have been if that traffic had continued along the original motorway.

4. Mr Mould also submitted that I should attach considerable weight to the fact that a fence had been constructed alongside the slip road, specifically to reduce noise to the retained building plot. Although the claimants were among those whose representations to the acquiring authority resulted in the construction of the fence, in fact the fence is also designed to serve other dwellings. Moreover, the fence is of limited thickness and length and following my inspection I am satisfied that it

has had a limited impact on the retained building plot in reducing the additional noise emanating from the slip-road.

5. The final adverse effect suggested by the claimants is a loss of privacy and visual amenity as a result of the new concrete stairway on the motorway embankment. In the light of my inspection, I agree that this complaint is justified, albeit to a minor extent.

6. When considering the relevance of the nine settlements referred to by Mr Rhodes in support of his allowance of a 20 per cent diminution in value, it is necessary to bear in mind that most of the comparable settlements relate to losses in value suffered by houses. Since site value is arrived at by subtracting all development costs from the value of the completed development, any reduction in the value of a house is likely to have a more than proportionate effect on the value of the land on which it is built. Having taken this factor into account, and having inspected four of the comparables which Mr Rhodes considered to be most relevant, I am satisfied that his allowance of £12,000 is insufficient to reflect what I have found to be the real damage to the subject land suffered by way of severance and injurious affection. I accept Mr Collinson's figure of £15,000.

7. I would add that, in my opinion, Mr Rhodes and Mr Collinson have both prepared their valuations on a basis which results in the amenity value of the lost trees to the building plot being counted twice. That value is a significant element in the claimants' loss by way of severance and injurious affection, but it has also been reflected by the two surveyors in their valuations of the subject land. Neither valuer quantified the proportion of his "land taken" value of £8,410 which was attributable to its proximity to the retained building plot and so I am unable to assess the extent of such double-counting, but its existence means that both valuers have been generous to the claimants. At one stage in his evidence Mr Collinson suggested that to his figure of £8,410 for the subject land should be added another sum representing the additional amenity value of the trees. He did not himself attribute a figure to that value, but I assume he was referring to Mr Armitage's amenity valuation of £17,496. In my view, the effect of making such an addition would be to value once again an item which has already been double-counted. There is no justification for it whatever.

Disturbance

1. Finally, I consider the value of the claimants' time spent in pursuing their claim for compensation. They assessed this at £15,000, based on 1,000 hours at £15 per hour. Mr Rhodes' figure for this item was £3,000, based on 100 hours at £30 per hour and, he said, was in line with compensation he had agreed in comparable cases elsewhere.

2. In support of his claim, Mr Lindsay produced a summary of correspondence he had written and received between September 1991, when he first read about the proposed compulsory acquisition, and September 1999, shortly before he prepared his written report to this Tribunal. In that statement, Mr Lindsay said:
"At the commencement of road scheme it was never envisage (sic) these proceedings would take place, therefore no specific record has been kept of actual time spent on the case. We would estimate from measurement of documentation, etc, a quantity of say 1,000 hours is reasonable."

1. The claimants originally submitted a draft claim to this Tribunal on 31 October 1997, but the notice of reference was not finalised until 26 August 1998. To the extent that Mr Lindsay has spent time on the matter since 26 August 1998, any costs incurred will form part of the costs of the reference, to be determined after my decision has been published. They do not form part of a claim for disturbance compensation.

2. It appears from Mr Lindsay's schedule of correspondence that he instructed Mr R A Dyson of Messrs F W Allen to negotiate compensation on his behalf in about November 1992, some three years before notice to treat was served. As a result of Mr Dyson's efforts, an advance payment of compensation was made to the claimants in 1997. On 12 March 1997 Mr Dyson submitted an invoice for his fees, amounting to £1,703.45 inclusive of VAT in respect of all the work he had done on the matter. This invoice was settled by the acquiring authority.

3. Thus, between late 1992 and March 1997 the claimants were represented by surveyors, in respect of whose time they have been paid in full. The onus is on the claimants to justify their claim for compensation. They have produced no such justification in respect of their claim for time spent prior to or after the appointment of Mr Dyson. Mr Lindsay suggested that the support for his claim was contained in the bundles of documents which he brought with him to the hearing. However, he made no attempt to relate any of this correspondence to the amount of time spent. Moreover, his suggestion that no time records were kept because the current proceedings were never envisaged does not explain the absence of such records in respect of the period of 23 months following his first approach to this Tribunal in October 1997.

4. The number of hours claimed is, in my view, surprising for a case of this magnitude. If one assumes an 8 hour working day, the claim for 1,000 hours is equivalent to 125 working days, or about half of an entire working year. In the absence of any documentary evidence to substantiate this number of hours, I agree with Mr Mould that Mr Rhodes' allowance, based on other settlements, of 100 hours at £30 per hour is more than generous. Indeed, Mr Rhodes' decision to offer an hourly rate of double that claimed reflects well upon him as an impartial expert witness.

5. The compensation payable to the claimants is therefore £26,600, comprising £8,410 for land taken, £15,000 for severance and injurious affection and £3,190 for disturbance. Statutory interest, together with the claimants' proper legal costs of transfer, if any, are to be paid in addition.

6. I should also deal with the additional compensation payable, assuming the claimants decide to accept the acquiring authority's offer to plant additional trees on the retained land. Mr Collinson considered that the effect of such planting would be to reduce the injurious affection loss by £5. Mr Rhodes considered the appropriate figure to be £500. In the light of my inspection I find that the correct figure is £250. I accept Mr Rhodes' uncontested evidence that the present value of the future costs of maintaining the new trees was £1,500. Accordingly, if the new trees are planted by the acquiring authority, the total compensation payable will be increased by £1,250 to £27,850.

7. What I have said so far concludes my determination of the substantive issues in this case. It will take effect as a decision when the question of costs is decided and at that point, but not before, the provisions relating to the right of appeal in section 3(4) of the Lands Tribunal Act 1949 and Order 61 rule 1(1) of the Civil Procedure Rules will come into operation. The parties are invited to make submissions as to the costs of this reference and a letter accompanying this decision sets out the procedure for submissions in writing.

Dated:
(Signed): N J Rose

ADDENDUM ON COSTS

1. I have received written submissions on costs.
2. The claimants indicate that they wish to accept the acquiring authority's offer to plant additional trees on their retained land and, consequently, total compensation of £27,850 in accordance with my alternative award. Since this figure is higher than any offer previously made by the acquiring authority, including an unconditional offer of £27,000 made on 19 January 2000, they ask for their costs totalling £3,497.38.
3. The acquiring authority contends that its offer to plant additional trees remained open only until publication of my decision on 16 August 2000. Since the offer had not been accepted by that date, it was no longer effective and the total compensation awarded was £26,600. This sum was less than the amount offered unconditionally on 19 January 2000, and so the acquiring authority seeks an order that it should pay the claimants' costs of the reference up to that date and that the claimants should pay its costs thereafter.
4. The acquiring authority also suggests that, faced with inflated and unsupported claims of over £98,000 it had no choice but to resist the reference. Notwithstanding the provisions of s 4 of the Land Compensation Act 1961, it

submits that this is a case where, if I am in any doubt, I should exercise my discretion under rule 52 of the Lands Tribunal Rules 1996 and award costs in favour of the acquiring authority. In exercising my discretion it is suggested that I have regard to the fact that I have rejected the evidence which made up the vast bulk of the claimants' case and that my award exceeded Mr Rhodes' figures by only £3,000, or £4,250 if the maintenance of the new trees is taken into account. This increase in compensation above that spoken to by Mr Rhodes has been more than offset by the costs incurred by the acquiring authority since January 2000, when it was open to the claimants to accept £27,000.

5. I deal firstly with the claimants' purported acceptance of the offer to plant additional trees. My recollection of the matter, supported by a contemporaneous manuscript note, is clear. I asked whether it would be appropriate for me to decide whether the new trees would reduce the claimants' loss to any extent on the basis that, if it would, the offer would still be available to be taken up within a reasonable period. Mr Mould replied that this suggested approach was acceptable to his client. In my judgement, such acceptance is incompatible with the acquiring authority's latest suggestion that the offer lapsed on the date my decision was published. The 'reasonable period' within which the offer could be accepted could not start until the parties were aware of my decision as to the effect of the tree planting on the claimants' loss.
6. My decision was published on 16 August 2000. Nine days later the claimants accepted the tree planting offer by way of a letter to the Tribunal, a copy of which was sent to the acquiring authority. In my judgment, this letter of acceptance was sent within a reasonable period of publication of my decision and is therefore effective. Accordingly, the total compensation payable is £27,850.
7. Turning now to the effect of the unconditional offer of £27,000, the relevant statutory provision is s 4(1) of the Land Compensation Act 1961. This reads as follows:

   "Where ...

   > (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 Lands Tribunal to that claimant does not exceed the sum offered ...

   the Lands 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 ..."
1. In applying these provisions to the circumstances of this reference, it is necessary to decide whether the unconditional offer of £27,000, made on 19 January 2000, should be compared with £26,600 which I awarded on the basis of no new tree planting, or £27,850 on the assumption of such planting. The relevant history is as follows. On 15 July 1998 Mrs Marsh wrote to Mr Lindsay, confirming details of the new trees which could be planted by the acquiring authority. She added that she had informed the authority's agents

   "that you are uncertain at this stage, whether you wish to proceed with this offer, particularly if this may have a bearing on your discussions with the District Valuer."

The letter concluded by inviting Mr Lindsay to contact Mrs Marsh, should he decide to accept the offer or have any further queries.

1. Mr Lindsay replied briefly to that letter, stating that
   "the matter will be considered".
1. An "Agreed Statement of Facts" incorporated in the expert evidence of Mr Rhodes dated June 1999, stated at para 11:
   "The Highways Agency ... have made an offer following a recommendation as part of the mitigating works to additionally plant trees on the boundary of the property. This has been declined by the claimants."
1. This document was not signed by the claimants. In his own written statement, however, Mr Lindsay said (para 5.30)
   "Mr Rhodes has offered to have some trees planted on our retained land. We have not considered this as a suitable part solution ..."
1. As previously indicated, it was only as a result of a question from me at the hearing addressed to Mr Mould that the tree planting offer was again placed on the table. I conclude, therefore, that the unconditional offer of £27,000 was submitted on the basis that at the time the offer to plant new trees had been rejected by the claimants. It was in my view entirely reasonable for the acquiring authority to make an offer on that basis. Moreover, at the date my decision was published, the claimants had still not accepted the tree planting proposal. Accordingly, for the purposes of s 4(1)(a), the unconditional offer of £27,000 should be compared with and exceeds my award of £26,600.
2. The claimants point out that no offer was made by the acquiring authority to pay compensation for the maintenance of the new trees until the hearing of the reference. I bear that in mind, but it is not in my view a sufficient reason to depart from the general rule in s4(1)(a). Accordingly, I order that the acquiring authority shall pay the claimants' costs of the reference up to 19 January 2000. Thereafter the claimants shall pay the acquiring authority's costs. Such costs are to be agreed or in default of agreement determined on the standard basis by the Registrar of the Lands Tribunal in accordance with the Civil Procedures Rules.

Dated:
(signed): N J Rose