



ACQ/182/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – Compulsory purchase – acquisition of shop and premises in connection with Docklands Light Railway extension – valuation – business disturbance – compensation determined at £25,400

IN THE MATTER of a NOTICE OF REFERENCE

BETWEEN

**YUSAF SAGLAM
T/A JENNY'S RESTAURANT**

Claimant

and

DOCKLANDS LIGHT RAILWAY LIMITED

**Acquiring
Authority**

Re: 24 Greens End, Woolwich, London SE18

**Determination without an oral hearing under Rule 27, Lands Tribunal Rules 1996
by P R Francis FRICS**

The following case is referred to in this decision:
Klein v London Underground Limited [1996] 1 EGLR 249

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DECISION

1. This is a decision to determine the amount of compensation payable by Docklands Light Railway Limited (DLR) (the acquiring authority) under the Docklands Light Railway (Woolwich Arsenal) Extension Order 2004 (the Order) to Mr Yusuf Saglam (the claimant) in respect of the compulsory acquisition of his leasehold interest in premises at 24 Greens End, Woolwich, London SE18.

2. The parties agreed that the determination should be made without an oral hearing, and in reaching my conclusions I have considered the statement of case (in the form of an expert witness report) and a supplemental statement prepared by David P Connolly FRICS FCI Arb MEWI for the claimant, and the acquiring authority's reply, supplemental observations and the expert reports prepared by John Lexley BSc (Hons) MRICS (valuation) and Gareth Woodward FCA (accountancy). I undertook an unaccompanied inspection of the site of the former premises, and the surrounding area on 1 November 2007.

The claim

3. The claimants case was that the value of the remaining leasehold interest in the premises was £40,000, the value of the business that was lost, due to the claimant's inability to find suitable alternative premises, was £48,000, and the losses incurred from the forced sale of equipment were £14,000 making a total of £102,000. The acquiring authority, whilst agreeing that the business had to be extinguished, contended that it had no value due to the fact that its limited profitability would be reduced to nil by the impending rent review, and that Mr Saglam, in fact, made a profit from the forced sale of the equipment. The only compensation due, therefore, was for the value of the remainder of the lease, which was assessed at £10,875.

Facts

4. The parties did not produce a formal statement of matters agreed or the facts and issues remaining in dispute. However, from the evidence, I find the following facts. The subject premises comprised a ground floor lock up shop with basement storage and a small yard area to the rear in a Victorian terraced unit that had offices above (in separate occupation), and were located in a short parade towards the northern end of Greens End, at its junction with Powis Street and Beresford Square in Woolwich town centre. The valuers agreed that the ground floor had a gross internal area of 51.53 sq m (554 sq ft), and the basement was 38.76 sq m (417 sq ft). Mr Connolly, for the purposes zoning the areas for comparison purposes, included the basement in the calculation and said these areas equated to 39.5 sq m (425 sq ft) in terms of Zone A (ITZA). Mr Yexley said that inclusion of the basement area in the ITZA calculation, where it was not used for retailing purposes, was inappropriate. He applied his assessment of rental value to the ground floor ITZA area at 34.61 sq m (372.5 sq ft), and added a separate figure for the overall basement area of 38.75 sq m (417 sq ft) calculated at £3 per sq ft. As this was the approach used in the adopted list of comparable transactions that had been referred to, I shall adopt Mr Yexley's methodology in my conclusions.

5. The claimant's premises were occupied under the terms of a lease dated 1 April 1992 made between Mainfare Limited and Eflatun Yilmaz, Mr Saglam having taken an assignment in 2000. The lease commenced on 1 February 1992 at an initial rent of £12,500 pa which was subject to review on 25 December 2001 and 5 yearly thereafter, and was due to expire on 24 December 2016. Clause 3(20) permitted uses within Classes A1, A2, A3 or B(1)(a) of the Town and Country Planning (Use Classes Order) 1987. The rent payable at the agreed valuation date of 5 October 2005 was £15,000 pa, and the premises were utilised by Mr Saglem as a small restaurant serving principally burger type and grilled quick-service foods.

6. The Order authorising the compulsory acquisition of the subject premises was made on 12 March 2004, the General Vesting Declaration was made on 5 August 2005 and possession was taken on 5 October 2005. Mr Connolly submitted a Notice of Reference to this Tribunal on 14 November 2006.

Issues

The issues to be addressed in this determination are:

- i. The value of the claimant's leasehold interest in the subject premises at 5 October 2005. (Rule (2), section 5, Land Compensation Act 1961 (the Act));
- ii. The value of the claimants business that was extinguished on that date. (Rule (6), section 5 of the Act);
- iii. Whether compensation is payable for losses on forced sale of the claimant's fixtures and equipment (Rule (6)).

Claimant's case

7. Mr Connolly is a chartered surveyor who has over 30 years valuation experience in the South East London, and North Kent areas, and is based in West Wickham, Kent. He said, in connection with the value of the lease, that Woolwich is a thriving regional centre and the subject premises were right in the town's central area, looking almost directly down Powis Street which is the principal shopping street. There being only about 15 months from the valuation date to the point at which any profit rent being enjoyed by the tenant would be lost, Mr Connolly accepted that, in pure valuation terms, there would be little value produced by capitalising that profit rent. However, it was his view that a prospective purchaser would pay far in excess of the pure capitalisation figure in order to get a foothold in such a prime location – such additional payment being known as “key money”. He gave an example (391 Lewisham High Street) of where he considered there must have been an element of key money in the purchase price, as the £150,000 price was achieved at the same time as the rent was reviewed to an open market level. However, he was unable to confirm the split, if any, between goodwill and a premium for the lease.

8. On the basis of his analysis of comparable properties in Blackheath Village, at 2 Powis Street, virtually opposite the subject premises, and at 391 Lewisham High Street which gave a value £800 per sq m (£75 per sq ft) ITZA, Mr Connolly said applying this to the subject premises at October 2005 gave a rental value of £31,600. This gave a profit rent of £16,600 pa, or about £20,000 for the 1.25 years before the rent review. He said that in his professional opinion, a purchaser would bid double that, or £40,000, to gain the foothold to which he had referred. He accepted that it had not been possible to separate out any element of goodwill that may have been included within the Blackheath properties, but said that 391 Lewisham High Street was particularly helpful as it was very similar and also enjoyed A3 restaurant use. It had been sold for £150,000 immediately following a rent review, which, he stressed, proved the key money argument. Mr Connolly then referred to 2 Powis Street that had also been used as a comparable by Mr Yexley, and said that in his view the A3 use permitted at the subject property outweighed the fact that 2 Powis Street could be argued to be in a slightly better trading location. That property had had a rent review in June 2004 to £75 per sq ft ITZA, which was the figure he adopted to estimate the rental value of the subject premises at October 2005. As to Mr Yexley's reference to 13 Beresford Square, Mr Connolly said that the subject property was in an infinitely better position, and the two locations could not be deemed comparable, particularly in terms of passing trade.

9. Turning to goodwill, Mr Connolly said an analysis of the claimant's accounts for the 3 years 2002 – 2004 showed steady turnover and a profit, after removing "loan scenarios etc", of about £12,000 pa. To this should be applied a multiplier of 4 to give a value for the business of £48,000. In response to the suggestion by the acquiring authority that any profits would be wiped out by a review to market rent, he said that shops did not normally close just because the rent went up. He said that there were opportunities for prices to be increased, and for the business to be managed more efficiently.

10. Mr Connolly said that the claimant had sold the assets for £6,000 whereas there was a sum of £25,644 shown in the accounts as "tangible assets". Thus, a loss of about £14,000 had occurred. He did not accept that the cost of acquisition, stated by Mr Yusuf to have been £20,000, would have been written down to a figure that was less than the amount received on forced sale.

Acquiring authority's case

11. In its reply to the claimant's statement of case, the acquiring authority said that far from being able to narrow the differences between the parties prior to the matter being referred to the Lands Tribunal, Mr Connolly's assessment of the compensation due had increased, in stages, from £50,000 in April 2005 to the £102,000 being argued for in this reference.

12. Mr Yexley, who is a chartered surveyor, and a director of Ardent Management Ltd, a company specialising in the provision of property and compensation advice in respect of major transport and regeneration schemes, dealt with the Rule (2) aspects of the claim in his report. He produced a schedule of comparables relating to rent reviews and new lettings on a number of premises in Powis Street, Beresford Square, Thomas Street, Wellington Street and Woolwich New Road between December 2002 and November 2005. The evidence, he said,

demonstrated that rental values in Powis Street were £75 per sq ft in 2004, and those in Beresford Square were in the range £45 to £55 per sq ft. Values in the other streets referred to were somewhat lower. 2 Powis Street, which was in a far superior location, was at the corner of the main shopping street and the link into Beresford Square, virtually opposite the subject property. The pedestrian flows past it, and its general visibility to the public, would be significantly higher than at the subject premises on the 6 days of the week that Woolwich Market, which was located principally in Beresford Square but spread along Greens End, was operating. The subject premises would, he said, be hidden by the stalls, and were on the wrong side of the street to benefit most from the pedestrian flows. Mr Yexley adjusted the June 2004 review rent of £75 per sq ft on 2 Powis Street upwards by 7.5% to reflect the fact that rental values rose at the rate of 0.5% per month between that review date and the valuation date, and a further 10% to reflect the fact that the subject premises had a more valuable A3 use, but then reduced the resultant sum by 30% for the subject's poorer location to give an equivalent value of £66.08 ITZA. He did the same exercise on 13 Beresford Square which had been a new letting, without premium, in November 2005. That unit also had A3 use, and was let at virtually the same time as the valuation date, so no adjustments were needed for those factors. However, it was considered that the Beresford Square location was inferior to Greens End, and he made an adjustment of 22.5% (as confirmed, he said, by the DV's zoning figures in the respective rating assessments), from the £55 per sq ft achieved to give an equivalent value for the subject premises of £67.37 per sq ft ITZA. Taking an average produced a figure of £66.70 which he applied to the ground floor Zone A area. Adding the basement at £3 per sq ft, gave a rental value of £26,100 pa.

13. Mr Yexley did not go on to deal in his report with the question of profit rent, but in its reply and supplemental statement, DLR said that, using the agreed multiplier of 1.25 for the 15 months during which the premises enjoyed a profit rent of £11,100 pa, gave a value for the lease of £13,875. They then suggested that a deduction should be made to reflect marketing and legal fees of £1,000 and a further £2,000 to reflect the benefit that a purchaser would wish to see from the below market rent to leave a net value of £10,875.

14. As to key money, Mr Yexley said that there was initially no evidence that key money had historically been paid in respect of any lettings in the vicinity, and that it was not possible to establish whether the premium paid for 391 Lewisham High Street did include such an element. There was, it transpired, one transaction (at 2 Woolwich New Road) where an open market letting at full value of A3 and A1 premises with residential accommodation over, achieved a premium of £15,000 in June 2003. However, he said that there was no evidence of what that premium related to and it may have reflected factors other than key money. It was submitted by DLR that whilst the argument that, in certain circumstances, a hypothetical purchaser would pay a premium to gain a foothold in a particular trading location was sustainable, but in this instance it was unlikely. There was no question that a tailor would pay a premium to be in Saville Row, but why, they asked, would any potential occupier pay additional monies for A3 premises in Woolwich when the existing occupier was making limited profits. They referred to *Klein v London Underground Limited* [1996] 1 EGLR 249, which was a reference relating to a barbers shop at the entrance of Waterloo Station, where the Tribunal held (at 255):

“...the claimant has failed to produce any evidence that key money has been paid in the open market at the valuation date for retail units in ‘prominent’ locations in or adjacent [to] railway or underground stations.”

DLR said that the situation was the same here, in that no concrete evidence of payments that could clearly be described as key money had been produced.

15. Mr Woodward is a chartered accountant and a partner in the Forensic accounting Department of Begbies Traynor of Manchester. He has been practising in the sphere of forensic accounting since 1990 and, in respect of this reference, has considered the statement of Mr Connolly and the 3 years accounts to which he had referred. He said that it appeared that Mr Connolly had used the EBITDA (earnings before interest, taxes, depreciation and amortisation) approach in assessing the average annual profit at £12,000. However, whilst he had correctly made no adjustments for tax or amortisation, he appeared to have added back depreciation, bank charges and VAT penalties which were, as opposed to genuine costs of financing, merely business expenses incurred. The only adjustment that should be made from the net profits that the accounts produced should be interest, which would give an average of £11,200. Nevertheless, the EBITDA approach was not considered to be the appropriate multiplicand for this type of business. Depreciation should be allowed for, as it is also a genuine business expense. In his view, the appropriate multiplicand in a case such as this was the reported net profit - which averaged £9,549 for the 3 years in question.

16. A charge for the return to be expected from the total capital invested in the business (shown in the accounts as £84,350) needed to be deducted, and based upon a fair annual expected return of 5%, this was £4,200 pa, leaving a multiplicand of £5,400. Although Mr Woodward did not specifically comment upon an appropriate multiplier, DLR submitted in their reply that the business operated by Mr Saglam had no market value. The true annual profitability was in the region of £5,400 but, in some 15 months time, the rent would increase by over £11,000, completely eradicating any profit. Even if, as Mr Connolly suggested, the owner was able to shave some of his costs, and increase his prices, it was unrealistic to suppose that profitability could be increased to a level that covered the revised rent, let alone give Mr Saglam something to live on as well. Although it was accepted by the council that it was unusual to apply a nil multiplier to the stated multiplicand, it was considered that nobody would pay for a business that would not be able to show a profit once the rent had been increased. It was submitted that the £37,000 reference to goodwill in the 2002 accounts may have reflected either higher historic profits, or was an indication that the claimant had overpaid when he acquired the business.

17. Regarding the claimed loss on forced sale of assets, the council pointed out that sum of £25,644 shown in the 2004 accounts as tangible assets included £18,500 for the value of the leasehold interest in the premises, and capitalised legal fees of £2,437. The net book value (which is not a valuation but an estimate of the equipment’s residual value to the business) was £4,707 at 31 August 2004. This represents the written-down cost of equipment purchased when Mr Saglam took over the business, and acquired subsequently totalling £11,378. The sale of the equipment at £6,000 therefore represented a “profit”, and no compensation was therefore payable under this head. In summary, it was submitted that the total compensation payable should be the £10,875 being the profit rent on the lease.

Conclusions

18. Looking firstly at the value of the lease, I prefer Mr Yexley's evidence. He undertook a detailed analysis of a number of rent reviews and new lettings in the vicinity, from which he was able to build up a clear picture of prevailing values at around the valuation date. He then applied adjustments that produced a value per sq ft for the subject premises approximately midway between those prevailing at 2 Powis Street (a very good and highly visible location), and 13 Beresford Square (a less attractive or central position), and I consider them to be fair. I therefore accept Mr Yexley's assessment of the profit rent for the remaining 1.25 years of the lease at £13,875, but do not think that a prospective purchaser would make the deductions that he then applied for legal expenses and the "benefit" of the profit rent. A profit rent is just that, and I think that a purchaser would expect to pay the vendor the value of it.

19. As to key money, Mr Yexley referred in his schedule of comparables to a premium of £15,000 being paid in respect of the new letting of 2 Woolwich New Road, but then dismissed that evidence on the grounds that there was no evidence of precisely what the sum related to. The valuers indeed agreed that the evidence relating to that property was inconclusive, and that no weight could be attached to it. I note that Mr Connolly thought that key money would be double the profit rent, but again there was no conclusive evidence to support this view. Although I note that reference was made to *Klein*, in my view the circumstances here are somewhat different, and on the facts of this case, I conclude that a purchaser would pay a small premium to, as Mr Connolly said, gain a foothold in that location. That location was, despite the drawbacks of being somewhat hidden by the market stalls on 6 days a week, particularly central and benefited from high pedestrian flows where the additional opportunities afforded by the A3 use would be attractive. Doing the best that I can, I determine the compensation for the value of the remaining leasehold interest in the subject premises at £20,000.

20. Turning to the value of the business, I accept the evidence of Mr Woodward, and am satisfied that the annual profit calculated on the accepted basis, was in the region of £5,400 pa. The acquiring authority's arguments that any profit would be wiped out immediately the rent was reviewed are persuasive, and on the strength of the figures that have been produced, I do not think that a prospective purchaser would attribute very much value to the business. Nevertheless, it would be unusual, as DLR admit, for a nil multiplier to be applied, and, in my judgment, a purchaser would have his own plans and would look to repositioning and restructuring the business to increase turnover. He would, I think, attribute some value to the goodwill that Mr Saglam had built over many years, and I assess this at a multiplier of 1 - £5,400.

21. As to losses on the sale of fixtures and equipment, I accept Mr Woodward's evidence in this regard, and conclude that no loss was occasioned on the written down value. It follows that I determine the compensation to be paid to the claimant in the total sum of £25,400.

22. This decision determines the substantive issues in this reference, and it will become final when the question of costs is resolved. The parties are invited to make submissions in writing in accordance with the details set out in the attached letter.

DATED 7 November 2007

(Signed) P R Francis FRICS