IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2017] UKUT 432 (LC)
Case No: ACQ/42/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory Purchase – house acquired as part of wider regeneration programme – property in derelict condition – market value – cost of repair works – residual value – loss of rental income – whether basic loss payment calculated by reference to market value or whole claim – Land Compensation Act 1961 section 5 rule (5) - compensation determined at £16,413

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

ZUMRED QUADIR KHAN	**Claimant**
- and -	
STOCKTON-ON-TEES BOROUGH COUNCIL	**Acquiring Authority**

Re: 13 Tarring Street
Stockton-on-Tees
TS18 1HH

DECISION ON WRITTEN REPRESENTATIONS

P D McCREA FRICS

The following cases are referred to in this Decision:

Pattle v Secretary of State for Transport [2009] UKUT 141 (LC)

Director of Building and Lands v Shun Fung Ironworks Ltd [1995] 1 All ER 846

Gateley v Central Lancashire New Town Development Corporation (1984) 48 P&CR 339

Morrissey v Wigan Council [2011] UKUT 192 (LC)

Parmar v London Borough of Barnet [2015] UKUT 510 (LC);

Parbakher v Manchester City Council [2011] UKUT 214 (LC)

DECISION

Introduction

1. This short decision determines the amount of compensation payable to Mrs Zumred Quadir Khan ("the claimant") arising out of the compulsory purchase by Stockton-on-Tees Borough Council ("the acquiring authority") of 13 Tarring Street, Stockton-on-Tees, TS18 1HH ("the reference property"). The reference property was acquired pursuant to the Stockton-on-Tees Borough Council (Parkfield - Phase 2) Compulsory Purchase Order 2014 ("the CPO"), which was confirmed by the Secretary of State on 8 January 2014. On 4 November 2014 the acquiring authority made a General Vesting Declaration, under which the freehold interest in the reference property was vested in the acquiring authority on 5 December 2014, which is the valuation date.

2. The Notice of Reference was made on 5 May 2017 by the claimant's agent, Mr Paul Stevenson MRICS, of the firm Thomas : Stevenson, who requested that the reference be dealt with under the Tribunal's written representations procedure. The acquiring authority is represented by Mr Simon Fraser MRICS, a valuer in the authority's Land and Property department, who requested the standard procedure. On 30 August 2017, the Registrar ordered that the reference be dealt with by way of written representations. The parties complied with the Registrar's subsequent direction as to replies and final submissions. Both valuers have referred to without prejudice discussions and meetings. However the parties have not stated an agreement to waive privilege, and I have not understood them to do so impliedly, and I have therefore not had regard to or placed weight on reference to without prejudice discussions.

3. Mr Stevenson put the claim in the following way:

Market value in good condition:	£60,000	
Less cost of repairs in 2005	£15,000	
Market value as at GVD disregarding the scheme:		£45,000
Loss of rent:		£22,815
Pre-reference professional fees:		£1,000 plus VAT
Post-reference professional fees:		£5,000 plus VAT
Boarding up costs:		£288.00
		£79,568
"Statutory" loss @ 7.5%		£5,967.50
Total Claim:		£85,535.60

4. There is a mathematical error, since the subtotal of the amounts assuming VAT at 20% is £75,303, and with "statutory" (or basic) loss of 7.5% of £5,647.73, £80,951. Nothing turns on this as will be evident from my conclusions.

5. Mr Fraser's opinion of the appropriate compensation is:

Market Value:	£5,000	
Loss of rent:	£0	
		£5,000
Basic loss @ 7.5%		£375
Boarding up costs:		£288
Total:		£5,663

Plus, reasonable surveyors and legal fees.

6. The boarding-up costs are agreed. The issues between the parties are market value assuming good condition, the costs of putting the property into that condition, loss of rent, and whether the basic loss payment of 7.5% should be calculated by reference to the market value of the property or the total claim.

Facts

7. From the evidence I find the following facts.

8. Tarring Street is located in a wider scheme of regeneration in the Parkfield/Mill Lane area, south-west of Stockton-on-Tees town centre. The reference property was (and I assume still is – there is no evidence of demolition) a two-storey inner-terraced dwelling house, with a single-storey rear element, built in around 1900 of traditional solid brick construction under a slate roof. On the ground floor there were two reception rooms, a kitchen and rear w.c. On the first floor there were two bedrooms. The gross internal floor area was approximately 66 sq m.

9. The property had been vacant since around 1994. The last tenant had caused internal damage. By December 2009, the roof was damaged to the extent that pigeons could enter through missing slates. On 25 March 2010, the property suffered an arson attack, after which it was boarded up and the missing slates replaced. At the valuation date, nearly four years later, the property was in an exceptionally dilapidated condition, comprising in effect a brick shell under a very poor roof.

Evidence and conclusions

10. Both valuers have arrived at their respective market values by way of a short residual method, deducting from the market value in reasonable condition the cost of works required to achieve that condition to arrive at a market value at the valuation date in a dilapidated state, but

ignoring the cost of works associated with the fire and subsequent vandalism. I follow that method.

Market Value in reasonable condition

11. The parameters between the parties were not wide – Mr Stevenson's value was £65,000 compared with Mr Fraser's £50,000.

12. Mr Stevenson relied upon a series of purchases of houses in the scheme area by the acquiring authority which, with one exception, were within a price range of £50,000 to £65,000. In Tarring Street: seven properties were purchased in 2007 at an average price of £57,017; 13 properties in 2008 at an average price of £59,058; one property in 2011 at £55,750; and two properties in 2012 at an average price of £48,750. Mr Stevenson noted the acquisition of 15 Tarring Street, adjoining the reference property, at £58,000. In nearby Buchanan Street, the average price paid was £57,750 in 2011, and £57,766 in 2012. The last acquisition before the GVD was 94 Buchanan Street, on 21 November 2014, at £62,000.

13. Mr Stevenson considered that had the reference property been in good condition at the valuation date, the market value would have been in a range of £55,000 to £65,000. He adopted a mid-range value of £60,000.

14. Mr Fraser's analysis was more detailed than Mr Stevenson's, analysing sales by reference to floor areas and allowing for differing condition. As regards 94 Buchanan Street, Mr Fraser agreed that the purchase price was £62,000. The property had been refurbished in 2007 following a fire, and had double-glazing, a modern fitted kitchen and bathroom, and a combi-boiler. With a floor area of 84 sqm it was larger than the reference property, having a two storey rear element. The purchase price equated to £738.10 per sqm. The properties in Buchanan Street were generally larger than those in Tarring Street, with bay windows, but of more relevance Buchanan Street had a higher percentage of owner-occupiers. These factors led to a pre-scheme evidence showing average prices in Buchanan Street being 16.8% higher than those in Tarring Street, but Mr Fraser considered 10% to be more realistic. Applying this to the £738.10 per sqm paid for 94 Buchanan Street would produce a rate of £664.20 per sqm.

15. Mr Fraser also relied upon six transactions outside the scheme area, but within a one kilometre radius of the reference property, having a price range of £48,000 to £62,500 between October 2013 and January 2015. Four were in a similar location to the reference property, one was slightly better, and one was slightly worse. The average price equated to £680.00 per sqm. He said that the two bedroomed acquisitions within the scheme were in the region of £700 per sqm.

16. From all of the above, Mr Fraser considered a rate of £715.00 to be "more than generous", which he applied to the floor area of 70 sqm to arrive at £50,050 – say £50,000.

17. In their further submissions, neither valuer diverted from his original view. Mr Stevenson was critical of the absence from Mr Fraser's report of the other purchases within the scheme. Mr Fraser said that most of these purchases were over a period of time in a better

market, and for larger properties. He relied upon the Land Registry House Price Index for Stockton-on-Tees which showed a significant fall in values between April-May 2008, having an index figure of around 200, to a figure of around 165 in mid-2009. At April 2010 the index had rallied to around 175-180, before starting to fall again. No data was submitted for the valuation date. Mr Fraser said that 15 Tarring Street, which Mr Stevenson had noted, was acquired in July 2008 at £58,000, but was a larger property at 82 sqm – the purchase price fitting his tone of £707 per sqm.

18. I prefer Mr Fraser's approach, which is more rigorous than Mr Stevenson's relatively broad brush method. I do not place much weight on the transactions during 2007 and 2008, more than six years before the valuation date, during which time there were large fluctuations in value. The purchase of 15 Tarring Street, the next door property, is again historic, but if anything it points to a ceiling value of £58,000 for a larger property acquired in better market conditions. As regards 94 Buchanan Street, sold only one month before the valuation date, I am satisfied that Mr Fraser's differential between the two locations is reasonable, and that he has also taken into account the general tone in values. Accordingly, I adopt Mr Fraser's market value in refurbished condition of £50,000.

Cost of refurbishment work

19. Mr Stevenson had been told by his client that it was last let in 2004, but accepted that there was no evidence in support of that. Mr Fraser, in contrast, was able to rely on council tax records which indicated that the property was registered as uninhabitable on 16 November 1994. Mr Stevenson said the last tenant damaged internal doors and fittings, but owing to the claimant's ill-health, the property was not refurbished and was not re-let. Following the announcement of the CPO, the claimant was encouraged by Mr Fraser not to refurbish the property (Mr Fraser specifically denied this and there was no witness statement from the claimant to support it) and its condition gradually deteriorated. Before the arson attack in 2010, the acquiring authority had acquired and boarded up 30 of the 34 houses in the street. It was inevitable that the remaining properties would become targets for vandalism and metal theft. In Mr Stevenson's view, this was a consequence of the scheme. He referred to *Pattle, Shun Fung,* and *Gateley v Central Lancashire New Town Development Corporation*[1] and a raft of other cases, but made no reference as to which parts of these decisions he wished to me take account of. However, following Mr Fraser's further submissions, the point was not in issue, since it was agreed that vandal and fire damage should be disregarded.

20. In Mr Stevenson's view, a buy-to-let landlord would expect to spend approximately £15,000 to refurbish the property to its pre-fire-damaged state. His calculation included the cost of new windows (£1,595), a refitted bathroom (£299) and kitchen (£695), new central heating and redecoration. In what might best be described as a rough and ready approach, Mr Stevenson submitted copies of newspaper adverts and websites including those of B&Q and

[1] *Pattle and Pattle* v *Secretary of State for Transport* [2009] UKUT 141 (LC); *Director of Building and Lands* v *Shun Fung Ironworks Ltd* [1995] 1 All ER 846; *Gateley v Central Lancashire New Town Development Corporation* (1984) 48 P&CR 339

"Really Cheap Kitchens". His view was that a buy-to-let landlord would use offers such as these and have the products fitted by local contractors.

21. Mr Fraser submitted that the refurbishment costs should be calculated on those which an average purchaser would expect to pay for the work, relying on *Morrissey v Wigan Council* [2011] UKUT 192 (LC). His estimate of the refurbishment costs, based on an itemised contractor's quote, was £53,535 excluding VAT. This comprised £32,300.56 of basic work including a new roof (£7,560.00), heating and water system (£5,320.00), new kitchen (£2,940.00), new upvc windows and doors (£6,300.00), and a new damp proof course (£5,320.00). The remaining amount included the cost of a new bathroom suite (£973.69), re-plastering, redecoration, and internal joinery.

Residual value

22. Mr Stevenson deducted his cost of work of £15,000 from his market value assuming a refurbished condition of £60,000 to arrive at £45,000. Mr Fraser accepted that the weakness in his approach, in which the cost of refurbishment exceeded the market value once refurbished, was that it suggested a negative value. He adopted a nominal figure of £5,000 on the basis that a DIY developer or owner-occupier would be prepared to pay a modest sum.

23. In my view, each valuer took a fairly extreme position, although based on my determination of the market value of the property in good condition at £50,000, the difference between the parties narrows – Mr Stevenson would be at £35,000 compared with Mr Fraser's £5,000. Mr Stevenson's estimate was very approximate, and simply based on press advertisements. He had not provided a breakdown of fitting, delivery, or labour costs. I agree with Mr Fraser that the cost to be reflected is one that an average purchaser would pay for the work involved, but I am not persuaded that this purchaser would carry out work to the extent to which Mr Fraser's contractors had quoted.

24. The weakness of this short residual technique, particularly for properties of modest capital value, is that it can artificially distort what should be considered – the property in the relevant condition at the valuation date.

25. The photographs show that the property was exceptionally dilapidated at the valuation date, and whilst part of that condition was owing to fire damage, which both valuers have ignored, there is no doubt in my mind that a significant amount of work was required to refurbish it, as the building was effectively a shell. I have not derived assistance from Mr Stevenson's evidence of costs, and yet I am not persuaded that an average purchaser, based on the likely value of the property when refurbished, would spend the amount which Mr Fraser's evidence suggested – which he in effect accepted was too high. Doing the best I can, I determine that the value of the property at the valuation date would have been £15,000.

Loss of rent

26. The claim includes £22,815 for loss of rent during the shadow period of the CPO. Mr Stevenson said that this period was from December 2005 to the valuation date, and calculated the loss of rent as follows:

> 468 weeks at £80 per week at 75% to reflect management and voids.

27. There is a mathematical error in this calculation, since 468 weeks at £80 per week is £37,440, which less 25% is £28,080. Mr Stevenson repeats his calculation in several places, making a typing error unlikely. His end figure of £22,815 would actually be the product of a weekly rate of £60 per week. His erroneous total claim figure does not help solving the mystery, since this would point to £27,080. However, it is unnecessary for me to decide whether he meant £60 per week – amounting to £22,815 – or £80 per week – amounting to £28,080, since I dismiss this element of the claim for several reasons. First, while Mr Stevenson relied on *Shun Fung* this element of the claim fails one of the conditions set down by Nichols LJ in that decision – that there must be a direct causal link between the acquisition and the loss in question. No such link has been proved. There is no evidence that, after a long period of the property lying empty, the claimant had decided to refurbish it and would have done so had it not been for the scheme. Secondly, the details of the claim were entirely speculative. There was no evidence in support of the rental income level (whichever it was), or choice of deduction for management costs and voids. I make no award of loss of rent in this claim.

Pre-reference professional fees

28. The claimant claims £1,000 plus VAT in pre-reference professional fees, but Mr Stevenson provided no further information nor any documents in support of the figure. Mr Fraser's response was that reasonable legal costs incurred by the owner in the shadow of the CPO would be reimbursed by the acquiring authority upon proof, but no such proof had been submitted.

29. In the circumstances I direct that the claimant shall forward to the acquiring authority documentary evidence of the costs incurred, and that the parties shall confirm the position in their costs submissions as outlined below.

Post-reference costs

30. The claimant claims £5,000 plus VAT in post-reference costs. Again, no further detail was provided. Mr Fraser said that reasonable fees incurred during the negotiation to acquire a property either after the GVD had been made or in the shadow of a CPO would be reimbursed by the authority and upon determination of those fees. However, costs relating to the reference

were at the Tribunal's discretion and not ordinarily awarded on references which proceeded under the written representation procedure unless there had been unreasonable behaviour.

31. In my judgment, whilst it was Mr Stevenson who requested the written representation procedure, it is clear that in doing so the claimant was not forgoing the right to reclaim professional fees. Mr Fraser is correct that, in normal circumstances, costs are not awarded under the written representations procedure, but as the Tribunal's Practice Directions explain (at 12.3) the Tribunal's discretion is qualified by the provisions of section 4 of the Land Compensation Act 1961:

> 1) The general rule is that the successful party ought to receive their costs. On a claim for compensation for compulsory acquisition of land, the costs incurred by a claimant in establishing the amount of disputed compensation are properly to be seen as part of the expense that is imposed on the claimant by the acquisition. The Tribunal will, therefore, normally make an order for costs in favour of a claimant who receives an award of compensation unless there are special reasons for not doing so.
>
> 2) Particular rules, however, apply by virtue of section 4 of the Land Compensation Act 1961. Under this provision, where an acquiring authority has made an unconditional offer in writing of compensation and the sum awarded does not exceed the sum offered, the Tribunal must, in the absence of special reasons, order the claimant to bear their own costs thereafter and to pay the post-offer costs of the acquiring authority. However, claimants will not be entitled to their costs if they have failed to deliver to the authority, in time to enable the authority to make a proper offer, a notice of claim containing the particulars set out in section 4(2). Where a claimant has delivered a claim containing the required details and have made an unconditional offer in writing to accept a particular sum, if the Tribunal's award is equal to or exceeds that sum the Tribunal must, in the absence of special reasons, order the authority to bear their costs and to pay the claimant's post-offer costs.

32. Accordingly, I direct below that I shall determine costs following further submissions from the parties. I would encourage them, in advance of making those submissions, to agree as many of the pre- and post-reference costs as possible, confirming in their submissions those costs that are agreed, and those costs that remain in dispute.

Basic Loss

33. The parties are agreed that the claimant is entitled to a "statutory" or basic loss payment at a rate of 7.5% - the point in dispute is 7.5% of what?

34. The claimant claimed 7.5% of the total claim, including boarding up costs and professional fees. Mr Stevenson said that he had attended an RICS seminar on whether

statutory loss should be claimed on the whole loss or just market value [of the property acquired], and "the view taken was that statutory loss payment should apply to the whole loss".

35. Mr Fraser's view is that the 7.5% should be applied to the market value of the property. He relied upon s.33A of the Land Compensation Act 1973 which refers to the value of an interest being "its value for the purpose of deciding the amount of compensation payable in respect of the acquisition…" and to *Behchet v London Borough of Southwark* [2014] UKUT 182 (LC) and *Parmar v London Borough of Barnet* [2015] UKUT (LC) in which basic loss was calculated in this way.

36. In *Parmar*, the specific point of the figure to which the percentage should be applied was not in issue since the substantive claim was based only on the market value of the acquired property. In fact, a basic loss payment had not been claimed but that did not prevent the Tribunal (Mr A J Trott FRICS) from determining that a claim could be made and if so would be calculated at 7.5% of the market value as determined.

37. Similarly, in *Behchet,* whilst the point was not in issue, I commented (at [45]):

> "In cross-examination, [the claimant's agent] appeared to concede that the appropriate amount is 7.5% of the [value of the] land acquired. In my judgement that is a correct reading of s33A of the Land Compensation Act 1973, as amended by the Planning and Compulsory Purchase Act 2004."

38. Recent decisions of the Tribunal have applied the percentage to market value. In *Parbakher v Manchester City Council* [2011] UKUT 214 (LC), the basic loss percentage was applied to the market value of the property excluding reinvestment costs and fees.

39. Section 33A of the Land Compensation Act 1973 provides:

> "(1) This section applies to a person –
>
> (a) if he has a qualifying interest in land,
>
> (b) if the interest is acquired compulsorily, and
>
> (c) to the extent that he is not entitled to a home loss payment in respect of any part of the interest.
>
> (2) A person to whom this section applies is entitled to payment of whichever is the lower of the following amounts –
>
> (a) 7.5% of the value of his interest;
>
> (b) £75,000
>
> (3) A payment under this section must be made by the acquiring authority.

(4) An interest in land is a qualifying interest if it is a freehold interest or an interest as tenant and (in either case) it subsists for a period of not less than one year ending with whichever is the earliest of –

…

(c) the vesting date (within the meaning of the Compulsory Purchase (Vesting Declarations) Act 1981) if a declaration is made under section 4 of that Act (general vesting declaration);

…

(5) …

(6) The value of an interest is its value for the purpose of deciding the amount of compensation payable in respect of the acquisition; but this is subject to subsections (7) and (8).

(7) If an interest consists partly of a dwelling in respect of which the person is entitled to a home loss payment the value of the interest is the value of the whole interest less the value of so much of the interest as is represented by the dwelling.

(8) If rule (5) of section 5 of the Land Compensation Act 1961 (equivalent reinstatement) applies for the purpose of assessing the amount of compensation the value of the interest is nil."

40. Accordingly, (putting aside for the moment the £75,000 ceiling) in respect of a qualifying interest, the basic loss payment is calculated at 7.5% of the value of the interest "for the purpose of deciding the amount of compensation payable in respect of the acquisition", subject to qualifications if the claimant is entitled to a home loss payment for part of the property, or the value is calculated on the basis of equivalent reinstatement.

41. Whilst section 33A of the 1973 Act refers to rule (5) but does not specifically refer to rule (2) of section 5 of the 1961 Act, in my judgment since the basic loss payment is calculated at 7.5% of the value of this interest, being "its value for the purpose of deciding the amount of compensation in respect of the acquisition", rule (2) applies so that the value of the land being acquired 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"

42. That can only mean the market value of the property in the conventional sense –which would be realised by a notional sale. It cannot mean, as is claimed here, other items which might form part of the claim but which are unrelated to the value of the property, for example professional fees in preparing the claim, or boarding up costs. In my judgment, it also excludes "compensation for disturbance or any other matter not directly based on the value of the land" under rule (6), since the value of the land is simply what it could be sold for on the open market.

43. Accordingly, I determine that the claimant is entitled to a basic loss payment of 7.5% of £15,000, viz: £1,125.

Determination

44. I determine that the compensation payable to the claimant is as follows:

Market Value:	£15,000
Basic loss payment:	£1,125
Boarding up costs:	£288.00
Total:	£16,413

45. This decision is final on all matters other than pre-reference costs and the costs of the reference. The parties may now make further submissions on such costs, and a letter giving directions for the exchange and service of submissions accompanies this decision. I remind the parties of my directions in paragraphs [29] and [32] above.

2 November 2017

Addendum

46. Following receipt of my substantive decision the parties have reached agreement as to costs, and in line with that agreement I determine that the acquiring authority shall pay the claimants pre-reference and post-reference costs which total £1,845 including VAT where applicable.

P D McCrea FRICS

21 December 2017
P D McCrea FRICS