IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 0023 (LC)
Case No: LCA/29/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION - MINING SUBSIDENCE – dwelling house - remedial action – demolition and rebuilding – schedule of works pursuant to Coal Mining Subsidence Act 1991 section 6(2)

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

MARK WIDDOWS **Claimant**

- and -

THE COAL AUTHORITY **Respondent**

Re: 15 Bayfield, West Allotment, Newcastle upon Tyne, NE27 0BH

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- -

Hearing date: 4 December 2017

Before: Paul Francis FRICS

Royal Courts of Justice, London WC2A 2LL
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Simon Hetherington, of HPS Chartered Surveyors, Houghton Le Spring, instructed by the claimant
Michael Wright, solicitor, instructed by DLA Piper UK LLP, Solicitors, Sheffield, for the respondent

DECISION

Introduction and facts

1. In this reference the Tribunal is required to determine the extent of the work required to make good damage caused by mining subsidence.

2. Mr Mark Widdows ("the claimant") is the tenant and part owner (through a Help-to-Buy/Equity-Share Scheme) of a conventionally constructed, two-storey, three-bedroom semi-detached house known as 15 Bayfield ("the Property") on a modern residential development (constructed by Bellway Homes in 2010) in West Allotment, approximately midway between Newcastle-upon-Tyne and Whitley Bay, Tyne and Wear. The property is leasehold, subject to a term of 125 years. In March 2016, significant mining subsidence damage (which had also affected a large number of other properties on the estate) was seen to have occurred to the Property. On 4 August 2016, the claimant served upon the respondent a damage notice, pursuant to section 2 of the Coal Mining Subsidence Act 1991 ("the 1991 Act"). In September 2016, the claimant appointed Mr Simon Hetherington of HPS Chartered Surveyors, Houghton Le Spring, to act as his agent.

3. The respondent is The Coal Authority ("the CA") which was established pursuant to the Coal Industry Act 1994 ("the 1994 Act"). Under section 43(3) of that Act, the CA is the responsible person in relation to mining subsidence damage affecting land which is not within an area of responsibility of a person holding a licence authorising the carrying out of coal mining operations. The CA accepts that it is the responsible person in this case and, following investigations, it gave the claimant notice on 29 September 2016 pursuant to section 4(1) of the 1991 Act that it agreed it had a remedial obligation in relation to the damage to the Property. The damage was significant and it identified four possible remediation options, one of which was for the CA to consider purchasing the property at market value. Mr Michael Wright, Legal Director of DLA Piper UK LLP, represents the CA.

4. Initial negotiations took place between the parties and by letter of 15 November 2016, the CA suggested that it was prepared to recommend to the Secretary of State (under section 5(7) of the 1994 Act) that the property be purchased for the sum of £165,000 (the VO's valuation) together with a Home Loss Payment and reasonable estimated moving costs bringing the total to £190,000. If that could not be agreed, the CA said it would be prepared (option (a)) to demolish the Property and, following ground investigation and any necessary remediation works, to rebuild it; it would continue to pay the cost of the claimant's rental accommodation for the duration. Alternatively, (option (b)) if the claimant were to request it, the CA would reimburse the cost of works carried out by him equal to the costs that had been estimated in a schedule (pursuant to section 6(1)-(2) of the 1991 Act). Due to the nature of the damage and the fact the property was semi-detached, option (b) would have been impractical and was not subsequently pursued, but the schedule served by the CA in which it described the work it considered necessary to make good the damage remains contentious.

5. Although the parties had initially agreed that purchase was the preferred option, the CA's offer was comprehensively rejected by the claimant's agent in an email of 18 November 2016. The reasons given for the rejection are not pertinent to this decision but in brief summary, owing in part to what was described in the claimant's skeleton argument as difficulties relating to his "unique position" as only part owner of the Property, the offer was wholly inadequate to allow the claimant to purchase a similar property and thus return to an equivalent position.

6. The proposed schedule of works was also rejected (pursuant to section 6(3) and 6(4) of the 1991 Act) because it failed to include sufficient or required information particularly in respect of boundary treatment and landscaping, external works, modifications, fixtures and fittings and decoration.

7. The CA then "in an effort to address the claimant's objections", issued a revised schedule under section 6(2) of the 1991 Act on 19 January 2017, together with notice pursuant to section 6(6) requesting a variation of the schedule. That section provided that where any party by notice requests a variation of the schedule of remedial works, and it is not agreed within 28 days (which it was not), the matter may be referred to the Upper Tribunal (Lands Chamber).

8. The CA thus filed a Notice of Reference to this Tribunal on 4 April 2017 to be dealt with in accordance with the wishes of both parties under the Tribunal's simplified procedure. The sole issue for determination in this reference is whether the CA's schedule meets the requirements of section 6(2) of the 1991 Act

Statutory provisions

9. Section 6 of the 1991 Act provides:

> "**6 Schedule of remedial works**
>
> (1) At the same time as the Corporation give a notice of proposed remedial action with respect to any damage, other than a notice stating that the only kind of action available for meeting their remedial obligation is the making of a payment under section 9 or 11 below, they shall send to the claimant and any other person interested ("the other parties") a schedule of remedial works which meets the requirements of that section.
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> (2) A schedule of remedial works shall specify—
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> (a) the works which the corporation consider to be remedial works in relation to the damage, that is to say, such works (including works of redecoration) as are necessary in order to make good the damage, so far as it is reasonably practicable to do so, to the reasonable satisfaction of the claimant and any other person interested; and
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> (b) in the case of each item of those works, the amount of the cost which the Corporation consider it would be reasonable for any person to incur in order to secure that the work is executed.

(3) The Corporation shall send with a schedule of remedial works a notice stating that, if any other party does not agree that the remedial action to be taken by the Corporation in respect of any damage should be determined by reference (where relevant) to the works and costs specified in the schedule, he should notify the Corporation within the period of 28 days beginning with the date of his receipt of the schedule.

(4) If any other party gives such a notification within the period and he and the Corporation do not agree the schedule, with or without modifications, before the next succeeding period of 28 days, the matter may be referred to the appropriate tribunal which may determine the works and costs to be specified in the schedule.

(5) A schedule of remedial works relating to any damage--

(a) comes into effect—

(i) if no party gives such notification to the Corporation within the period mentioned in subsection (3) above, at the end of that period; and

(ii) in any other case, on the date on which the schedule is agreed or determined under subsection (4) above; and

(b) may at any time be varied by agreement between the parties or in any manner determined under subsection (6) below.

(6) Where—

(a) any party by a notice given to the other party or parties requests a variation of a schedule of remedial works; and

(b) the variation requested is not agreed between both or all parties, with or without modifications, before the end of the period of 28 days beginning with the date of the notice,

The matter may be referred to the appropriate tribunal which may determine whether the schedule shall have effect subject to the variation.

(7) …

(8) …"

Subsequent actions

10. Following the Notice of Reference, the claimant and the CA have pursued extensive and ongoing discussions to agree the schedule of works to both parties' full satisfaction. The claimant's statement of case in the reference, dated 1 August 2017, identified in detail the alleged shortcomings of the 19 January schedule. On 13 October 2017, the CA produced and sent to the claimant a further revised schedule of works in the belief that it satisfied the requirements of section 6(2) of the 1991 Act, and that it addressed the concerns that the claimant had expressed. The letter (to HPS Chartered Surveyors) to which the revised schedule, drawings and photographs of record was attached, concluded:

> "This letter constitutes notice on the part of the authority, pursuant to section 6(6) of the 1991 Act, requesting a variation of the Schedule of Remedial works.
>
> On receipt of your client's signed acceptance of the revised schedule of repairs attached to this letter, the authority will withdraw its Lands Tribunal *(sic)* application and commence service disconnections and demolition works in order that your client's property can be rebuilt without further delay."

11. Following a subsequent exchange of emails between the parties dealing with some further reported deficiencies in the schedule, a final revised schedule was issued on 30 October 2017. In response, in an email to David Mason of the CA, Simon Hetherington said:

> "I refer to your email below and its enclosures and can confirm that I believe we are now at a stage whereby these adequately cover the rebuilding of 15 Bayfield. However, my client can't sign the acceptance form as it stands because his concerns regarding the redevelopment of the remaining part of the estate and therefore the siting of 15 Bayfield have not been adequately covered."

The email went on to explain the claimant's concerns regarding what the CA was intending to do about the overall redevelopment of the estate, other parts of which had also sustained subsidence damage, and the potential impact upon the value of the re-built 15 Bayfield if those works were either not carried out, or not done satisfactorily. It also suggested four further paragraphs that should be included within the form of acceptance before it was signed.

12. Those demands were significant and the CA refused to accede. It pointed out that its proposals for the wider area were not relevant to the schedule of works relating to the Property and, further, that any questions regarding the risks of potential long-term diminution were not issues with which section 6(2) of the 1991 Act was concerned.

13. With the acceptance form not being signed within the specified 28-day period, the CA resolved to proceed with the hearing set down for 4 December 2017.

Disposal

14. Shortly before the hearing, I was provided with the latest version of the schedule, plans and photographs produced on 13 October together with the additional revisions produced on 30 October.

15. Mr Wright explained that aside from the matter of the schedule of works, authority had been received from the Secretary of State for the purchase of the subject property by the CA, terms had been agreed with the claimant and conveyancing solicitors had been instructed on both sides. He also explained that the only reason for this matter coming before the Tribunal was to protect the CA's position if the agreed sale did not proceed and referred to issues that immediately prior to the hearing remained unresolved, particularly the fact that the claimant had refused to allow underground grouting of the old mine workings to be undertaken beneath

the Property. That issue was, in fact, resolved immediately before the hearing and it was anticipated that the sale/purchase would be completed "by Christmas". If that occurred, the Tribunal's decision would not be required.

16. I therefore resolved, with the agreement of the parties, to delay preparing this decision until close of business on 12 January 2018 (to give reasonable allowance for the Christmas break). As that date approached, I was advised that simultaneous exchange of contracts and completion was imminent, and granted a further stay to 25 January 2018. Mr Wright subsequently advised that if the Tribunal's determination was not submitted on that day, the cost implications to the CA would be considerable, as demolition contractors had been booked to commence works on 15 Bayfield, and undertake other works on the estate, starting on 26 January. I agreed that there would be no further stay, and that the decision (which would most likely be in the CA's favour) would be despatched on or by 25 January at the latest.

17. I have considered all the papers and confirm that I am satisfied that the schedule of works produced on 13 October 2017 together with the plans, photographs, costings and the minor amendments made on 30 October fully satisfy the provisions of section 6(2) of the 1991 Act. I note that it is agreed between the parties that as the CA has elected to execute repairs to the property in accordance with that schedule (if the sale/purchase does not proceed) that the costs contained therein are of no actual relevance to the issues between the parties.

18. I therefore determine that the remedial action to be taken by the CA in relation to the Property shall be that specified in the schedule of works in its amended form of 30 October 2017.

Dated: 22 January 2018

Paul Francis FRICS