

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2011] UKUT 169 (LC)
LT Case Number: ACQ/512/2010

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – property acquired by agreement as though compulsorily acquired – bridging loan for replacement property bought 12 months before authority took possession – whether claimant entitled to payment for this – held he was not – Land Compensation Act 1961, ss 5, 10A

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

GERALD DUNBAR

Claimant

and

**BLACKBURN WITH DARWEN
BOROUGH COUNCIL**

**Acquiring
Authority**

**Re: 23 Alaska Street
Blackburn
Lancashire BB3 0LY**

Determination on written representations

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DECISION

1. The claim in this case arises out of a sale by agreement of a house, 23 Alaska Street, Blackburn, which the claimant held as an investment property. On 15 September 2005 Alaska Street was declared a clearance area by the respondent council. The council first made an offer to purchase the house in November 2005, but agreement was not reached (on a purchase price of £60,500) until February 2007. Completion took place in April 2007. Left outstanding was a claim for disturbance compensation, and the claimant referred this to the Tribunal. The council for their part accept that this is a matter that can properly be determined by the Tribunal, and I proceed therefore on the basis that the claimant is entitled to such compensation by way of disturbance as he would have been entitled to if the property had been acquired from him compulsorily in April 2007.

2. The claim is for a total of £12,381.78 plus surveyor's fees, and of this amount £10,620 is in respect of a bridging loan on a replacement house, 34 Lytham Road, which, it is said, the claimant bought in April 2006. The council deny that he is entitled to this element of compensation, and the parties have agreed that the Tribunal should determine this question of entitlement on the basis of their written representations.

3. The case for the claimant is set out in a report by David Briffett BSc, MRICS, of Thomas V Shaw & Co Ltd, Chartered Surveyors, Commercial Valuers and Managing Agents in Blackburn and in a letter to the Tribunal dated 24 November 2010. Mr Briffett says that he was instructed by the claimant on 21 October 2005 to enter into negotiations with the council on their intended acquisition of the house and to negotiate his compensation claim.

4. The property, Mr Briffett says, was a mid-terrace house, built on the pavement line and with a yard to the rear. It was located in an area of low value Victorian terraced houses in the Mosley Street area of Blackburn. The property had gas central heating, and one window was double glazed. It was in good condition. The council had originally classified it as unfit, but the claimant did not accept that it was unfit, and a change of classification to that of added land would have been sought had the valuation not been agreed. The property was let on an assured shorthold tenancy.

5. Mr Briffett says that at the initial meeting with claimants the council's officers confirmed that they would treat the negotiations as though notices to treat had been served and that claimants would be entitled to the statutory payments. The claimant was paid market value for the property plus compensation for basic loss, leaving outstanding the disturbance claim.

6. Mr Briffett sets out in tabular form the history of the negotiations with the council. In June 2005, he says, the claimant had agreed to sell the house to a Mr Martin Corky, and on 25 August 2005 Baristow Eves, his estate Agents, issued a memorandum of agreed sale at a price of £59,950, and solicitors on both sides were instructed. When, on 25 September 2005, the clearance area was declared, Mr Corby withdrew. The council's first offer, £43,500, was made on 21 November 2005. A second offer, £52,500, was made in early 2006, and this was

increased in May 2006 to £55,000 and on 8 June 2006 to £56,500. A revised offer, £60,500, was made in February 2007, and this was agreed.

7. Mr Briffett says that had the council not acquired the property it would have been sold in the open market in the summer of 2005. The negotiations with the council were long drawn out, and a number of surveyors had been involved on the council's part. The council were dilatory in agreeing the compensation. It took them nearly 18 months to accept the market figure that has previously been freely negotiated. Mr Dunbar knew that he was to lose his property, and in a rising market it was not an easy task to find alternative premises for the same sum as he was receiving for the property which was to be demolished. His main source of income, Mr Briffett says, is his letting properties and he was not in a position to wait until the completion of one before commencing the search for an alternative investment property. In answer to the council's assertion that the costs of the bridging loan were not recoverable under section 10A of the Land Compensation Act 1961 because they were incurred more than one year before the date of entry, Mr Briffett says that they are nevertheless recoverable under rule (6) of section 5. Reliance is placed by Mr Briffett on the decision of this Tribunal on *Harvey v Crawley Development Corporation* [1957] 1 QB 485 and on the decisions of the Lands Tribunal in *Sadiq v Stoke-on-Trent City Council* (LCA/316/2008), *Cole v Southwark London Borough Council* [1979] 251 EG 477, *Adam v Woking Borough Council* (LCA/88/1999) and *Christos v Secretary of State for the Environment, Transport and the Regions* (ACQ/69/2001).

8. For the council there is a statement of case prepared by Trevor James, Senior Regeneration Surveyor with Capita Symonds, and written representations that were also prepared by Mr James. It is stated that Capita Symonds were instructed on 2 November 2005 to negotiate the purchase of 23 Alaska Street and a chronology of the negotiations, similar to Mr Briffett's, is produced. It is denied that the council were dilatory in agreeing the purchase price.

9. Appended to the statement of case is a copy of the Land Registry entry for 23 Alaska Street, which shows registration of the freehold title of Mr Dunbar on 5 August 2005 and records that the price stated to have been paid on 7 July 2005 was £37,500. It is questioned whether Mr Dunbar could, as Mr Briffett asserts, have negotiated the sale of the property in June 2005. The council's offers, it is said, reflected the rising property market and the final amount, agreed on a market value basis, should have left Mr Dunbar in no better or worse a situation. He continued to collect an income until he handed the keys to the council on 23 April 2007. Although it could be expected that a claimant will begin the search for an alternative property before completing the sale to an acquiring authority, it would have been reasonable for Mr Dunbar to wait until there was a degree of certainty before committing himself to a purchase and taking out a bridging loan. In this respect, by acting as he did, Mr Dunbar failed to mitigate his loss. In any event, it is said, he has no statutory right to compensation. The costs claimed were incurred more than a year before entry, and there is therefore no entitlement under section 10A; and he was not in occupation of the premises and is therefore not entitled to disturbance compensation under rule (6). Mr Dunbar, it is asserted, took advantage of a rising market by acquiring 34 Lytham Road some 10 months before completing the sale of 23 Alaska Street to the council. During that period 23 Alaska Street

increased significantly in value due to the rising market, and Mr Dunbar continued to receive an income from his tenant.

10. The claimant would not, in my judgment, have been entitled to be compensated for the cost of the bridging loan had his land been compulsorily acquired in April 2007, either under section 10A or under rule (6). Section 10A provides as follows:

“Where, in consequence of any compulsory acquisition of land –

- (a) the acquiring authority acquire an interest of a person who is not then in occupation of the land; and
- (b) that person incurs incidental charges or expenses in acquiring, within the period of one year beginning with the date of entry, an interest in other land in the United Kingdom,

the charges or expenses shall be taken into account in assessing his compensation as they would be taken into account if he were in occupation of the land.”

11. The property at 34 Lytham Road was acquired by the claimant in April 2006. The council took possession of 23 Alaska Street on 23 April 2007. The period within which the charges or expenses in acquiring an interest in other land must be incurred if they are to give rise to a claim under section 10A is the period of one year beginning with the date of entry. It is clear, therefore, that there would have been no entitlement to compensation under this provision.

12. Nor could there be entitlement to disturbance compensation under rule (6) because the claimant was not in occupation of the property. The law is as stated by Denning LJ in *Harvey v Crawley* (at 493):

“...Supposing a man did not occupy a house himself but simply owned it as an investment. His compensation would be the value of the house. If he chose to put the money into stocks and shares, he could not claim the brokerage as compensation. That would be much too remote. It would not be the consequence of acquisition but the result of his own choice in putting money into stocks and shares instead of putting it on deposit at the bank. If he chose to buy another house as an investment, he would not get the solicitors’ costs of the purchase. Those costs would be the result of his own choice of investment and not the result of the compulsory acquisition.”

13. The claim in respect of the costs of the bridging loan must inevitably fail, therefore. I would only add that it is clear in any event that Mr Dunbar has not incurred any loss that is attributable to his purchase of 34 Lytham Road. He does not dispute the council’s assertions that during the period from November 2005 to April 2007 there was a rising market and that he had the benefit during this period of two properties. Each of these increased in value during that period and he was able to derive a rent from each. The claim is wholly unmeritorious.

14. The claimant is not entitled to the amount claimed in respect of the bridging loan costs (£10,620). This leaves a balance on the total specified amount claimed of £1,761.78. Of this, it appears from Mr Brickett's report, the only item in dispute is the loss on the in situ value of carpets. For this, £1,000 is claimed, £300 is offered. I hope that the parties will be able to settle this item without further recourse to the Tribunal and also the amount of surveyor's fees, left unspecified in the notice of reference.

Dated 20 April 2011

George Bartlett QC, President