

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – acquisition of derelict detached house – valuation method – redevelopment value – basic loss payment where no application made before hearing

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

RANJANA ZEENA PARMAR

Claimant

and

THE LONDON BOROUGH OF BARNET

**Acquiring
Authority**

**Re: 22 Edgeworth Avenue
Hendon,
London. NW4 4EY**

Before: A J Trott FRICS

**Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
18 August 2015**

Robin Green, instructed by HB Public Law, for the Acquiring Authority.
The Claimant did not appear and was not represented.

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No cases are referred to in this decision.

DECISION

Introduction

1. This is a reference to determine the compensation payable to the claimant, Ms Ranjana Parmar, upon the compulsory purchase of her freehold interest in 22 Edgeworth Avenue, Hendon, London NW4 4EY (“the reference property”) by the London Borough of Barnet (“the acquiring authority” or “the council”).
2. On 6 November 2009 the council made the London Borough of Barnet (22 Edgeworth Avenue, Hendon, London NW4 4EY) Compulsory Purchase Order (“the CPO”) under section 17 of the Housing Act 1985. The CPO was confirmed by the Secretary of State on 7 October 2010 and a notice to treat was served on the claimant on 30 September 2013. Notice of entry was served on the claimant on 20 December 2013 and the acquiring authority took possession of the reference property on 15 January 2014, which is the valuation date.
3. The council referred the question of disputed compensation to the Tribunal under section 6 of the Compulsory Purchase Act 1965 following the claimant’s failure to respond to the notice to treat.
4. The claimant did not deliver to the acquiring authority a notice in writing of the amount claimed by her giving details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head was calculated (section 4(1)(b) of the Land Compensation Act 1961).
5. The council say that the open market value of the claimant’s freehold interest is £590,000. No claim in respect of disturbance or any other matter not directly based on the value of land has been submitted under section 5 rule (6) of the Land Compensation Act 1961 and the council therefore make no offer for this head of claim.
6. The hearing was originally listed on 16 February 2015 but was adjourned by order of the Tribunal because it was not satisfied that the claimant had received proper notification of the hearing. Despite several requests from the Tribunal the claimant did not provide her home address or the address of a representative that was prepared to act for her in this reference. The only contact address for the claimant that either the Tribunal or the acquiring authority has is her email address.
7. The Tribunal directed on 13 February 2015 that the claimant should file and serve an expert valuation report no later than 8 May 2015. No such report having been received the Tribunal issued an order on 8 June 2015 stating that unless the claimant filed and served an expert valuation report by 1 July 2015 she would be debarred from calling expert evidence in this reference. That deadline was not met and on 16 July 2015 the Tribunal duly debarred the claimant from calling

expert evidence. The Tribunal confirmed to the parties on 22 July 2015 that despite her persistent failure to provide her home address the claimant would not be debarred from the proceedings.

8. On 4 August 2015 the Tribunal received a telephone call from the claimant saying that she would not be able to attend the hearing on 18 August due to a stress-related illness and asking for the hearing to be adjourned. The claimant was asked to put this request in writing and to provide medical evidence of her condition no later than 4pm on 12 August 2015. No such request or medical evidence was received by that time. The claimant eventually put the request in writing by email on 14 August 2015 at 5pm. It was not accompanied by any medical evidence.

9. The Tribunal proceeded with the hearing on 18 August 2015. Shortly before the hearing finished a copy of a fax was delivered to the courtroom. This was a letter dated 18 August 2015 from the claimant's general practitioner describing the claimant's medical condition but not stating in terms that she was unfit to attend the hearing. The hearing continued.

10. The claimant did not appear at the hearing and was not represented.

11. Mr Robin Green of counsel appeared on behalf of the acquiring authority and called Mr Wieslaw Andrez Malinowski FRICS, a Principal Valuer with the acquiring authority, as an expert valuation witness.

Facts

12. The following facts are obtained from the evidence.

13. The reference property is located in an established residential area bounded by the M1 to the west, the A41 to the north and Station Road to the east. It is conveniently situated for Hendon Central underground station to the south east and Hendon mainline station to the south west. Brent Cross shopping centre is approximately 1.5 miles to the south east and is accessible by car in 5 minutes and by bus in 10 minutes.

14. The reference property is a three bedroom detached house with a bathroom, two reception rooms and a kitchen. An attached single garage had been demolished before the council took possession on the valuation date. The gross internal area is 134m². At the valuation date the reference property was in a derelict condition, with the interior having been stripped and the floorboards and some of the rear windows and doors removed. There was a pile of building debris at the rear of the building. The frontage to Edgeworth Avenue is 10.19m and there was a small front garden, with off-street car parking, and a large rear garden.

15. Planning permission was granted to the claimant on 4 June 2013 for a first floor side extension to the reference property and a two-storey rear extension. The gross internal area of the reference property would be increased by nearly 60% (78m²) to 212m². The proposal increased

the accommodation from three bedrooms to six bedrooms (two of which were in the attic space); from a single family bathroom to two family bathrooms and three en-suite bathrooms with dressing areas; from two reception rooms to four, with the addition of a living room and a study; and the inclusion of a new utility room. A single integral garage was also to be provided.

Statutory provisions

16. At the hearing the Tribunal asked the council's representatives whether the claimant was entitled to a "home loss payment" or a "basic loss payment" under sections 29 or 33A respectively of the Land Compensation Act 1973 ("the 1973 Act") in addition to the open market value of the reference property at the valuation date. So far as relevant those provisions state:

"29. – (1) Where a person is displaced from a dwelling on any land in consequence of –
(a) the compulsory acquisition of an interest in the dwelling.

...

he shall, subject to the provisions of this section and section 32 below, be entitled to receive a payment (hereafter referred to as a "home loss payment") from:

(i) where paragraph (a) above applies, the acquiring authority.

(ii) ...

(2) A person shall not be entitled to a home loss payment unless the following conditions have been satisfied throughout the period of one year ending with the date of displacement –

(a) he has been in occupation of the dwelling, or a substantial part of it, as his only or main residence; and

(b) he has been in such occupation by virtue of an interest or right to which this section applies,

but, if those conditions are satisfied on the date of displacement, a payment (referred to in this section and sections 32 and 33 below as a "discretionary payment") may be made to him of an amount not exceeding the amount to which he would have been entitled if he had satisfied those conditions throughout that period.

...

(4) This section applies to the following interests and rights –

(a) any interest in the dwelling.

..."

17. So far as material, section 33A of the 1973 Act states:

"(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 –
- (a) the date on which the acquiring authority takes possession of the land under section 11 of the Compulsory Purchase Act 1965 (entry to take possession of land);
 - ...
- (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) ...”

18. Section 33D provides for exclusions from the basic loss payment scheme:

- “(1) This section applies to a person if –
- (a) he is a person to whom section 33A, ... applies,
 - (b) a notice falling within subsection (4) has been served on him in relation to the land mentioned in that section,
 - (c) at the relevant time the notice has effect or is operative, and
 - (d) he has failed to comply with any requirement of the notice.

- (2) ...
- (3) No payment may be made under section 33A, 33B or 33C to a person to whom this section applies.
- (4) These are the notices –
 - (a) notice under section 215 of the Town and Country Planning Act 1990 (power to require proper maintenance of land);
 - (b) ...
- (5) ...
- (6) The relevant time is the time at which the compulsory purchase order in relation to the person's interest in the land –
 - (a) is confirmed, in the case of an order falling within section 2(2) of the Acquisition of Land Act 1981 (procedure for authorisation);
 - (b) ...
- (7) ...”

19. Section 33E concerns claims for basic and other loss payments:

- “(1) This section applies for the purposes of sections 33A to 33C.
- (2) A claim for payment must be made in writing to the acquiring authority.
- (3) The claim must give such particulars as the authority may reasonably require for the purpose of deciding –
 - (a) whether a payment is to be made;
 - (b) the amount of any such payment.
- (4) For the purposes of the Limitation Act 1980 a person's right of action to recover a payment must be taken to have accrued –
 - (a) in the case of a claim under section 33A on the last day of the period specified in subsection (4) of that section;
 - (b) ...”

Evidence

20. The claimant submitted no claim for compensation, produced no evidence and did not attend the hearing.

21. For the acquiring authority Mr Malinowski prepared an expert report dated 6 November 2014 to which he spoke at the hearing. Following a number of queries from the Tribunal Mr Malinowski was asked to correct his calculations; provide more details of his comparables and the indexation of their values; and to produce details of relevant planning permissions. Mr Malinowski submitted a supplementary expert report addressing these issues on 1 September 2015.

22. Mr Malinowski valued the property by four methods:

- (i) In his first method Mr Malinowski estimated the value of the reference property when restored as a three bedroom house and deducted the costs of restoring it from a derelict to a saleable condition. He calculated the gross development value (“GDV”) of the reference property in good repair as a three bedroom house by reference to the average price of five comparable house sales in Edgeworth Avenue. He adjusted the prices for time, accommodation (number of bedrooms) and additional factors (frontage, additional parking space and “kerbside appeal”). The average value was £714,967 from which Mr Malinowski deducted building costs, including fees, of £112,500, a figure provided by the acquiring authority’s in-house building surveyor, and developer’s risk and profit of 15%. This gave a total restoration cost of £129,375 and a residual (open market) value of £585,592 (rounded to £590,000).
- (ii) The second method relied upon what Mr Malinowski considered to be the best comparable, the sale of 35 Edgeworth Crescent in April 2013, the adjusted price for which was £686,195. He deducted costs as before to give a residual value of £556,820 (rounded to £555,000).
- (iii) The third method relied upon the sale of the adjoining property, 20 Edgeworth Avenue, in June 2014 (after the valuation date). The adjusted price for this sale was £721,207. Deducting costs as before gives a residual value of £591,832 (rounded to £590,000).
- (iv) The final method was based upon the development potential of the reference property as a six bedroom house in accordance with the planning permission granted in June 2013. Mr Malinowski obtained the GDV of this development by reference to the average adjusted sale price of four five-bedroom houses in Edgeworth Crescent and Vaughan Avenue. The average price was £949,465 from which he deducted costs, derived from BCIS average prices for January 2014 of £373,148 (including fees and developer’s risk and profit). This gave a residual value of £576,317 (rounded to £575,000).

23. Taking all four methods into consideration Mr Malinowski concluded that the open market value of the reference property at the valuation date was £590,000.

Submissions

24. Mr Green submitted that a home loss payment was not payable under section 29 of the 1973 Act because the requirements of section 29(2) had not been met. There was no evidence that the

claimant was in occupation of the reference property in the year before the acquiring authority displaced the claimant. The condition of the property, as shown in the exhibited photographs, suggested that the property had been unoccupied for some time.

25. Mr Green submitted that it appeared that section 33A of the 1973 Act (basic loss payment) applied to the claimant under section 33A(1). That being so she was entitled to a basic loss payment unless any of the exclusions under section 33D applied. Section 33D(1) provided that if, at the relevant time, there was an effective or operative notice falling within subsection 33D(4) the requirements of which had not been complied with by the claimant, then no payment could be made under section 33A. The “relevant time” was the time at which the CPO was confirmed, namely 7 October 2010.

26. Mr Green said that the only notice within section 33D(4) which the acquiring authority had found was a notice served under section 215 of the Town and Country Planning Act 1990 on 9 May 2012. As such that notice was not in effect at the relevant time for the purposes of section 33D and consequently the acquiring authority could not say that a basic loss payment was excluded under that section.

27. Turning to the provisions of section 33E Mr Green submitted that the acquiring authority had no record of a written claim for a basic loss payment having been made by the claimant under section 33E(2). Nor had the claimant provided any evidence in support of her claim. Mr Green submitted that in these circumstances the Tribunal could properly conclude on the balance of probabilities that no such written claim had been made. Although the claimant might be entitled to a basic loss payment she had not claimed it and Mr Green said that the award of compensation should not include such a payment.

Discussion

Value of the reference property

28. Mr Malinowski said in evidence that the best comparable was the sale of 35 Edgeworth Crescent in April 2013 for £655,000. The only adjustment that he made to this sale was for time since No. 35 had the same accommodation and other factors as the reference property. The time adjusted value of the sale price was £686,195.

29. 35 Edgeworth Crescent was a particularly good comparable because, like the reference property, it had planning permission for a major extension. Planning permission was granted on appeal on 30 March 2009 for a part single, part two-storey side and rear extension and the conversion of the garage into a habitable room and a loft conversion into a bedroom. The accommodation was increased from three bedrooms to five bedrooms (three en-suite) and a new study was provided together with a much enlarged lounge and kitchen/diner and a new utility room. This permission was renewed on 13 April 2012.

30. In my opinion 35 Edgeworth Crescent was not sold as an existing three bedroom house, it was sold for redevelopment as a much larger property. This conclusion is borne out by the fact that shortly after the sale in 2013 the purchaser applied for another planning permission, this time involving the conversion of the basement to a gym and cinema, among other uses. Planning permission was granted on 7 October 2013 and, as Mr Malinowski confirmed, development was underway before January 2015.

31. The purchase price of £655,000 paid for 35 Edgeworth Crescent must have reflected the property's redevelopment potential and I consider it to be a direct comparable to the reference property. The purchaser paid a price that took account of the 2012 planning permission and the prospect of a more valuable use of the basement.

32. The reference property did not have a basement, nor was one proposed in the June 2013 planning permission. Unlike 35 Edgeworth Crescent, which appears from the exhibited photograph to have been in reasonable condition at the date of sale, the reference property was derelict. But the reference property had planning permission for a sixth bedroom and also retained a garage.

33. On balance I consider that 35 Edgeworth Crescent was worth more than the reference property for redevelopment and extension and I deduct 5% from the adjusted sale price of No. 35 to reflect this. This gives a value of £651,885 which I round to £650,000.

34. Mr Malinowski did not undertake this direct comparison as one of his four valuation methods. His comparison with 35 Edgeworth Crescent (valuation method 2) assumes that it was sold as an existing three bedroom house. He then deducts the cost of restoring the reference property (also to a three bedroom house) which gives a value of £555,000. I put it to Mr Malinowski at the hearing that the sale price of 35 Edgeworth Crescent must have reflected its potential for redevelopment and that the price would already have taken account of the costs of that redevelopment. That being so it would be double-counting to deduct costs again as Mr Malinowski does. Mr Malinowski appears to have rejected this point and I think he was wrong to do so. I do not agree with Mr Malinowski's second valuation method and I give it no weight.

35. I would comment on Mr Malinowski's other three valuation methods as follows:

Method 1

36. Mr Malinowski's adjustments for "additional factors" were not fully explained. They appear to be based upon frontage, additional parking space and what Mr Malinowski described as "kerbside appeal". The frontages of the comparable properties vary from 10.58m to 13.5m with an average of 11.6m (excluding 35 Edgeworth Crescent). The frontage of the reference property is said to be 10.19m. Mr Malinowski does not explain how he obtained the frontage measurements. I note for instance that on the planning application plans for 35 Edgeworth Crescent the frontage is shown as 10.875m and not 10.93m as stated by Mr Malinowski. In my opinion Mr Malinowski has over emphasised the importance of these additional factors and I

would halve his allowances for comparables with frontages over 11.5m and make no allowance otherwise.

37. Mr Malinowski takes the average adjusted values of comparable properties in Edgeworth Avenue but omits his five comparables in Edgeworth Crescent from the calculation. He gives no reason for this omission. I would exclude 35 Edgeworth Crescent because I do not think the price reflected a sale of an existing three bedroom property for the reasons I have already given. But assuming that the other four properties were not redevelopment opportunities I see no reason why they should not also be included in the calculation of an average adjusted comparable value. This gives a figure, using my amended adjustments, of £771,000.

38. Adopting Mr Malinowski's building costs figure and his allowance for fees at 12.5% and developer's risk and profit at 15% gives a total cost of £129,375 to rebuild the reference property as a three bedroom house. Deducting this from the GDV of £771,000 gives a market value for the reference property under this method of £641,625, which I round to £642,000.

Method 3

39. This method relies upon the sale of 20 Edgeworth Avenue, the house adjoining the reference property. It was sold in June 2014, five months after the valuation date. Section 5A(2) of the Land Compensation Act 1961 states that:

“No adjustment is to be made in the valuation in respect of anything that happens after the relevant valuation date.”

Although this suggests that this comparable should not be taken into account, given the proximity of the comparable to the reference property I am prepared to use this comparable as a check on the valuation of the reference property by the other methods. Using the amended adjustments I have adopted under Method 1 above, and the same costs of repair, I estimate the (rounded) value of the reference property to be £630,000.

Method 4

40. Under this method, Mr Malinowski takes account of the development potential of the reference property by means of a residual valuation rather than by direct comparison with the sale of 35 Edgeworth Crescent. He adopts as comparables the sale of four five bedroom houses, adjusted for time and for size, to give an average figure for an equivalent six bedroom house. In this method only Mr Malinowski makes no adjustment for “additional factors”. Restating his average figure by using the amended adjustments I have adopted earlier gives £943,622. Mr Malinowski then makes a significantly greater allowance for building costs than he did in his other three methods. Whereas previously he adopted building costs of £100,000, or £746 per m² (based on the gross internal area of 134m² for the existing house given in the planning application dated 8 April 2012) he now adopts a rate of £1,362 per m² which he derives from BCIS Online Average prices. It appears that the figure adopted by Mr Malinowski is the median for “rehabilitation/conversion: ‘one-off’ housing detached (3 units or less).” This is shown as £1,326

per m² (not £1,362 per m² as adopted by Mr Malinowski). Mr Malinowski's supplementary Exhibit E does not show the upper quartile figure or the sample size upon which this figure is based. Nor does Mr Malinowski's evidence explain what is included within this figure. Mr Malinowski offers no explanation for the 78% difference (increase) in the costs which he adopts in his Method 4 compared with those adopted in his other methods. Mr Malinowski also adopts a spot figure of £5,000 for site clearance which he does not include in his other methods.

41. Adopting the (corrected) building costs figure of £1,326 per m² and a GDV of £943,622, but excluding the allowance for site clearance, gives a residual value for the subject property of £579,933 which I round to £580,000. I consider that the re-building and extension of the reference property in accordance with the 2013 planning permission would be a more complex and expensive building project compared with its reinstatement as a three bedroom house. I would therefore adopt a higher rate than £746 per m² used in Mr Malinowski's other three methods. In my opinion a rate of £1,000 per m² (an increase of 34%) would be consistent with Mr Malinowski's other valuations (i.e. slightly above the lower quartile as shown in the BCIS analysis). This gives a residual valuation of £669,347 which I round to £670,000.

42. My preferred valuation method is a direct comparison with the sale of 35 Edgeworth Crescent which produced a figure of £650,000 for the reference property. My valuations based upon Mr Malinowski's methods 1 and 4 are £642,000 and £670,000 respectively (an average of £656,000). Method 3, used as a check, gave a value of £630,000. In my opinion the open market value of the reference property at the valuation date was £650,000.

43. The claimant has made no claim for, or any reference to, compensation under section 5 rule (6) of the Land Compensation Act 1961 and I make no award under that head.

Basic loss payment

44. I accept Mr Green's submission that the claimant is not entitled to a home loss payment. There is no evidence that the claimant was in occupation of the reference property throughout the period of one year ending with her date of displacement. Nor was she in occupation at that date and therefore she does not qualify for consideration for a discretionary payment under section 29(2) of the 1973 Act.

45. Mr Green accepts that the claimant qualifies for a basic loss payment under section 33 of the 1973 Act and is not excluded under section 33D. Mr Green says that the claimant has not made a written claim for a basic loss payment under section 33E(2) and I have seen no evidence that the claimant has made such a claim.

46. Unlike a home loss payment, which is payable as of right upon qualification and is not dependent upon an application being made by the claimant, a basic loss payment requires the claimant to apply in writing to the acquiring authority in accordance with section 33E of the 1973 Act. Since no such application has yet been made I make no award of compensation for a basic loss payment. But, in my opinion, the claimant may still make an application under section 33E.

My determination of the market value of the reference property at £650,000 means that the amount of a basic loss payment, if an application is appropriately made, is fixed at 7.5% of that value or £48,750. The claimant has not yet made any claim of her own (the reference being made by the acquiring authority) but I see nothing in the 1973 Act that would prevent the claimant making an application for a basic loss payment after the Tribunal's determination of the market value of the reference property provided such an application complies with the limitation period referred to in section 33E(4). In this reference the claimant's right of action to recover a payment accrued on the valuation date, i.e. 15 January 2014. No application can be made after the expiration of six years from that date.

47. This decision is final on all matters other than the costs of the reference. The parties may now make submissions on such costs and a letter giving directions for the exchange of submissions accompanies this decision.

Dated 28 September 2015

A J Trott FRICS