



Neutral Citation Number: [2024] UKUT 020 (LC)

Case No: LC-2023-769

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)
IN THE MATTER OF A NOTICE OF REFERENCE**

Royal Courts of Justice

22 January 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory Purchase – property acquired subject to a mortgage – non– participation of mortgagor – property in disrepair – value less than outstanding mortgage debt – comparable transactions – compensation determined at £70,000 – section 15, Compulsory Purchase Act 1965

BETWEEN:

LLOYDS BANKING GROUP plc

Claimant

-and-

BURNLEY BOROUGH COUNCIL

**Acquiring
Authority**

**Re: 28 Spenser Street
Padiham
Burnley
BB12 8RD**

P D McCrea FRICS FCI Arb

DETERMINATION ON WRITTEN REPRESENTATIONS

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Introduction

1. This decision, determined under the Tribunal's written representations procedure, concerns the payment of compensation to the former mortgagee of a property which has been compulsorily acquired, where the level of that compensation does not meet the outstanding mortgage debt.
2. Where, as here, the borrowing mortgagor has not agreed the level of compensation nor taken any part in the proceedings, it is not open to the mortgagee and the acquiring authority simply to settle the level of compensation. Instead, it is for the Tribunal to determine the compensation to be paid by the acquiring authority under section 15 of the Compulsory Purchase Act 1965 ('the Act').
3. The property concerned is 28 Spenser Street, Padiham, Burnley, BB12 8RD ('the property'). The absent mortgagor is Mr David Geoghegan.

Background

4. On 4th May 2006, Mr Geoghegan bought the 999 year long-leasehold interest in the property for £67,500. On 7 March 2008, he mortgaged the property, granting Lloyds Banking Group plc ('the bank') a first legal charge over it. The bank's charge was registered on 25 March 2008.
5. The property was subsequently damaged by tenants. Falling into further disrepair, it came to the notice of the empty housing team of Burnley Borough Council ('the authority'), which takes a proactive approach to bringing dilapidated housing back into use, having done so in more than 100 cases in the last ten years. During their inspection, the council's officers found evidence of damp, water damage to ceilings, and general dilapidation. They concluded that only full refurbishment could bring the property back into habitable condition.
6. Between late 2020 and mid-2021 the authority corresponded with Mr Geoghegan who acknowledged the property's poor condition but said he did not have the funds to repair it. Discussions about funding remedial works came to nothing. The authority offered to buy the property, but at a price which was less than the bank's outstanding mortgage, and communications between the authority and Mr Geohegan then tailed off.
7. On 18 March 2022, the authority advised the bank that owing to the property's poor condition, a recommendation would be made to acquire it compulsorily. On 28 April 2022, the authority confirmed the Burnley (28 Spenser Street Padiham) Compulsory Purchase Order 2022. On 8 June 2022, the authority made a General Vesting Declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, and the property was vested in the authority on 13 September 2022. This is the valuation date for the purpose of calculating compensation.
8. Both the bank and the authority made further attempts to communicate with Mr Geoghegan, without success. The mortgage balance as at 23 March 2023 was £80,363.24.
9. On 23 November 2023, the bank made a reference to the Tribunal to determine the level of compensation payable. The reference was subsequently transferred to the Tribunal's written reference procedure for determination on the papers submitted.

Statutory Provisions

10. Section 15 of the Act provides:

“15.— Mortgage debt exceeding value of mortgaged land.

(1) If the value of any such mortgaged land is less than the principal, interest and costs secured on the land, the value of the land, or the compensation to be paid by the acquiring authority in respect of the land, shall be settled by agreement between the mortgagee and the person entitled to the equity of redemption on the one part, and the acquiring authority on the other part, or, if they fail to agree, shall be determined by the Upper Tribunal.

(2) The amount so agreed or awarded shall be paid by the acquiring authority to the mortgagee in satisfaction or part satisfaction of his mortgage debt. ...”

Evidence

11. It is common ground that at the valuation date the property was a three-bedroomed mid-terrace house of traditional stone construction under a pitched slate roof. There were two reception rooms and a kitchen on the ground floor, and three bedrooms and a bathroom on the first floor. There was a small front garden, paved over, and a rear yard. It is agreed that the property was dilapidated and required full refurbishment.

The bank's evidence

12. The bank's solicitors commissioned a valuation report from a Mr David Nicholls MRICS of Allied Surveyors, a firm based in Blackburn. Mr Nicholls was familiar with the Burnley area and had practised in Lancashire since 1990.
13. Mr Nicholls commented that the overall condition of the property would appeal to a local builder/speculator who would want to refurbish and renovate it. Demand from first time buyers would prove unlikely due to the difficulty in obtaining mortgage finance, without a large deposit.
14. He had regard to three sales of similar houses nearby on Spenser Street. Number 34 sold in January 2023 at £73,500. It was in similar condition to the subject property, requiring improvement, with no kitchen or bathroom fittings. It was marketed two days after the subject valuation date at £79,950 and was under offer shortly thereafter. Number 38 sold on 11 October 2021 for £88,000. It had two bedrooms (with a third in the loft, apparently without building regulations) but had been modernised and was well presented. Finally, number 32, which was identical in style, but had two bedrooms and was modernised, sold in May 2022 for £95,000.
15. On commenting on the evidence, Mr Nicholls said that number 34 was the most directly comparable property. It had been cleared of debris and been deep-cleaned, ready for renovation to commence. Its sale price reflected a tone of value of properties requiring refurbishment work, which was generally at £65,000 to £75,000. Properties requiring

refurbishment were sought after by buy-to-let landlords and builders/speculators who can add value by refurbishment.

16. Mr Nicholls valued the long leasehold interest at £70,000 at the valuation date.

The authority's evidence

17. The authority's 'initial' valuation of the property was £45,000, prepared by a council officer, Ms Margaret Rutherford. She described the condition of the property in similar terms to Mr Nicholl, being generally dilapidated. In repair, she would put the value at £90,000.
18. Like Mr Nicholls, Ms Rutherford relied on the sales of numbers 38 Spenser Street at £88,000 in October 2021, and 32 Spenser Street at £95,000 (off an asking price of £90,000) in May 2022. She noted both properties being in excellent condition.
19. She also relied upon the sale of number 40 Spenser Street in February 2022 at £86,999. Again, the property's condition was excellent. All three of her comparable properties were two-bedroomed houses.
20. Ms Rutherford's valuation comprised a single page 'property services inspection sheet' which after a commentary had a text box for 'initial valuation', and an adjacent box for 'agreed valuation', suggesting that there was some room for manoeuvre in her figure. This proved to be the case as the parties subsequently agreed a value of £60,000.

Discussion and conclusions

21. There are four comparable transactions. It is clear from the plan attached to the compulsory purchase order that they are all in the same terrace, and therefore no adjustment is required for location when comparing one against another. Neither valuer made any adjustment for a change in levels of value over the (narrow) window of time in which the sales of the comparables properties took place.
22. From the evidence, the values of two-bedroomed properties in good condition lie in the range of £87-90,000, and Ms Rutherford puts the subject property at £90,000 on that basis, although the subject property has three bedrooms, albeit two of them are small.
23. In my judgment it is misleading to simply deduct the cost of refurbishment work (which the in seeking the CPO the authority put at around £35,000) from a refurbished value to arrive at a value in poor condition. The market seems more nuanced than that. In Mr Nicholls' experience, properties in poor condition sold for £65-£75,000. It appears that developer/landlords are prepared to spend time and effort refurbishing a property with a view to letting it, without the need to immediately cover their costs. There appears to be force in Mr Nicholls' comment that properties in poor condition are sought after, number 34 selling within days of being marketed. I agree with him that this is the best comparable sale, being in similar condition to the subject property, put on the market within days of the valuation date, and selling shortly thereafter at £72,500. But it had been cleared and deep-cleaned. In my view his valuation at £70,000 was sound.

24. I therefore determine the value of the subject property at the valuation date at £70,000.
25. I am satisfied on the evidence that the mortgagor has chosen not to participate in the negotiations or the reference. The bank had made a valid claim under 15(1) of the Act, and that under section 15(2) I determine that compensation of £70,000, plus any statutory interest, should be paid to the bank in part satisfaction of the mortgage debt secured against the property.
26. I make no award of costs.

P D McCrea FRICS FCI Arb

22 January 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.