

UPPER TRIBUNAL (LANDS CHAMBER)



Neutral Citation Number: [2016] UKUT 514 (LC)
Case No: LCA/82/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Water – house adjoining River Brenig – flood prevention works including increased height flood wall opposite property and requirement to install flood gate – comparable evidence and price graphs of limited assistance – compensation determined at £5,000 - paragraph 5(1) of Schedule 21 to the Water Resources Act 1991

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

MR PETER BROWN

Claimant

- and -

THE NATURAL RESOURCES
BODY FOR WALES

Respondent

Re: Brenig Villa,
Doldre, Tregaron
Ceredigion, Wales, SY25 6JT

Hearing date: 11 October 2016

Peter D McCrea FRICS

Aberystwyth Civil Justice Centre, Aberystwyth, SY25 1AS

The Claimant appeared in person
Miss Jennifer Butcher for the Respondent

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DECISION

Introduction

1. This is a claim under paragraph 5(1) of Schedule 21 to the Water Resources Act 1991 (“the Act”) by Mr Peter Brown (“the claimant”) for diminution in the value of his property, Brenig Villa, Doldre, Tregaron, Ceredigion, Wales, SY25 6JT as a result of the implementation of a flood alleviation scheme for Tregaron carried out by Environment Agency Wales, the predecessor to the Natural Resources Body for Wales (“the respondent”) under section 165 of the Act. The hearing was conducted under the Tribunal’s simplified procedure.

2. Paragraph 5 of Schedule 21 provides:

“5 (1) Where injury is sustained by any person by reason of the exercise by the Agency of any powers under section 165(1) to (3) of this Act, the Agency shall be liable to make full compensation to the injured party.

(2) In case of dispute, the amount of any compensation under sub-paragraph (1) above shall be determined by the Upper Tribunal.”

3. Whilst the claimant did not frame his claim under paragraph 5 of Schedule 21, the respondent assumed that his claim was so framed, and I have proceeded on the same basis.

4. Mr Brown represented himself at the hearing, assisted by his father. The respondent was represented by Miss Jennifer Butcher, a solicitor at Hugh James, who called Mr Mark Davies of the respondent agency, who gave evidence of fact, and Mr James Andrews MRICS, a chartered surveyor employed by Llewellyn Humphreys, who gave expert valuation evidence.

5. On the afternoon of 9 October 2016, I made an unaccompanied external inspection of the claim property, the surrounding properties, and the town centre of Tregaron.

Facts

6. From the evidence and my inspection, I find the following facts.

7. Mr Brown’s house, Brenig Villa, is of traditional stone construction under a slate roof. It has a hall, sitting/dining room, living room and kitchen on the ground floor, and three bedrooms and a bathroom on the first floor.

8. Brenig Villa is a short walk from the town centre of Tregaron. It is in a terrace of houses on a road called Doldre. When viewed from Doldre, the house to the left of Brenig Villa is called Glan Rhyd, and that to the right is called Nant yr Arian. The freehold interest of each of the three properties includes a garden and parking area on the opposite side of Doldre. To the rear of the terrace is the River Brenig, which is separated from the houses by a footpath, which is elevated from the river on a stone bank. On the opposite side of the river, a new flood protection wall has been constructed, which is approximately 1.2m higher than the original bank on that side. Close to the properties is a pedestrian footbridge over the river, from which their rear elevations and the new flood wall can be seen.

9. Tregaron had a history of flooding from the River Brenig, which flows through the centre of the town. A flood risk management plan and flood model carried out by the respondent had identified a number of areas, including residential and commercial properties, that were at risk of flooding. The main aim of the flood protection work (“the scheme”) was to reduce the risk of flooding in Tregaron to 1:100 years, and it formed part of a wider regeneration strategy which sought to protect the town’s future commercial existence.

10. The principal elements of the scheme were the removal of a surface water sewer which crossed the river and acted as a weir; dredging of the river bed; provision of scour control systems; a new 233m long flood bund in a field to the north of the town; 70m of new masonry-faced flood walls, 1.5 to 2.0m high; 116m of new masonry-faced walls, 3 to 4m high; piecemeal raising of existing riparian walls where new walls could not be provided; provision of demountable flood gates to some properties; and construction of a new headwall and manhole on an existing Welsh Water surface sewer at the downstream extent of the scheme.

11. Ceredigion County Council granted planning permission for the scheme on 23 May 2008, under code A080085, conditional upon the scheme being carried out in accordance with submitted plans. Mr Brown objected to the application, as he thought the proposed works would devalue his property, and might undermine its very shallow foundations.

12. Work to implement the scheme commenced on 14 July 2008. On the stretch of the river behind Brenig Villa, the main work was dredging of the river bed, the construction of the new flood wall on the opposite bank, and provision of flood gates. This work was carried out between May and September 2009.

13. The new flood wall opposite Brenig Villa was originally designed to be approximately 0.8m above the existing bank. When work commenced, a crack appeared in the bank. This led the respondent to carry out a further survey, as a result of which alternative plans were submitted to the planning authority. The new wall was now to be 0.44m higher and was of a concrete block finish with a cast-in stone face, rather than the natural stone finish that was originally approved. These amendments, and increased wall height, were treated by the planning authority as minor alterations and accordingly were not publicised. The effect of the changes as far as Mr Brown is concerned is that the new flood wall is approximately 1.2 m higher than the height of the original bank.

14. A steel flood gate was provided to Mr Brown, which was intended to be installed at times of heightened flood risk. Mr Brown found it too heavy, as a result of which a lighter replacement was offered, but not accepted.

15. Mr Brown has been paid £3,000 as compensation for disturbance as a result of the scheme.

Mr Davies's evidence

16. Mr Davies said that as a result of Mr Brown's rejection of a flood gate not only Brenig Villa but the whole street is affected by a potential weak spot in the flood protection measures.

17. Mr Davies said that prior to the scheme, Mr Brown's house was at risk of flooding during a 1 in 25-year event. If Mr Brown installed the flood gate that the respondent wished to supply to him, his property would be protected to a 1 in 100-year event level. Without the flood gate, his property was still in a 1 to 25-year band.

18. During my inspection I noticed that at either end of the footbridge near to Mr Brown's house there were fixings for further floodgates and Mr Davies explained that once a flood alert had been triggered, the agency would install floodgates at those points. I asked him whether or not they could also install the floodgate at Mr Brown's house and he said that they could if he agreed to this.

Mr Brown's claim

19. Mr Brown said that the value of his property had been diminished by the flood prevention work. He did not place a figure on that diminution, but was content to leave that to my judgment.

20. Mr Brown relied upon a comparison of the sale of Glan Rhyd and Nant yr Arian in support of his claim. He submitted evidence to show that Glan Rhyd sold in October 2005 at £120,000. He said that Glan Rhyd was slightly smaller than his own property and had less land on the other side of Doldre.

21. He submitted evidence from internet-based house price comparison websites which indicated that the average asking price for terraced properties in Tregaron was £117,500 in January 2009 rising to £293,750 in December 2009. Mr Brown said that Nant yr Arian was originally put on the market at £132,500 in July 2009 (he submitted a letter from the former owner which suggested that actually it was put on the market in September 2007) at an asking price of £132,500 or £135,000. Mr Brown said that the property eventually sold in 2014 for £85,000.

22. Mr Brown considered that prior to the scheme, Brenig Villa was worth in the order of £150,000. However, it was valued by local agents, Evans Brothers in February 2012 at £75,000 to £85,000.

23. Mr Brown also submitted copies of letters in the local press, and letters from other householders, which claimed that property prices had been adversely affected by the scheme.

24. Mr Brown submitted that all of this evidence pointed to a significant loss as a result of the scheme, following which the outlook from the rear of his property was a high wall, and that his and the adjoining properties were effectively used as flood defence walls as part of the scheme. He said that cracks had appeared in his house following the scheme, but in answer to a question from me he confirmed that any effect on value from cracking did not form part of his claim.

Mr Andrews MRICS

25. Mr Andrews submitted an expert report, in the form of a valuation report, in which he expressed the view that the value of the appeal property had not been diminished by the scheme, and that arguably had benefitted from it.

26. He had inspected the ground floor only¹ of the property in March 2012. He considered that it was in a poor state of repair, requiring considerable modernisation and improvement, which he said had a significant influence on its value.

27. In his fairly short report, Mr Andrews referred to four comparable transactions. These were:

Number 5 High Street, a similar terraced house – sold 2 December 2011 for £70,000
Llwynnon, Dewi Road, an end terraced house – sold 1 October 2007 for £140,000
Wenallt, Dewi Road, a semi-detached property – sold 15 December 2007 for £190,000
Bryn Cottage, a detached cottage – sold in October 2006 for £85,000.

28. Mr Andrews said that in his opinion the appeal property had a value as at 1 July 2009 in the region of £85,000 to £90,000; and as at 23 March 2012 in the region of £70,000 to £80,000. He said that the reason for the reduction was purely owing to market conditions.

29. In answer to questions from me, Mr Andrews said that Lywynnon and Wenallt were not comparable to the appeal property, but he had included them to show the type of property that could be bought for the level of value that Mr Brown was attributing to the appeal property.

¹ There was a dispute between Mr Brown and Mr Andrews as to whether Mr Brown refused Mr Andrews permission to inspect the first floor, but in any event he did not.

30. Mr Andrews also said that he had dealt with all of the claims for disturbance as a result of the scheme, and that no other householder had made a claim for diminution in value.

31. Mr Brown made several criticisms of Mr Andrews' report. He had been provided with a copy of an earlier report. He said that in Mr Andrews' expert report to the Tribunal, some textual alterations had been made to paint the appeal property in a less favourable light. For instance, a comment that the appeal property "had been affected by the work" had been taken out, as had the description of the appeal property's garden as "large". Mr Andrews had disclosed in his report that he had led his firm's consultancy contract, providing estates services to the respondent since 1988. Mr Brown submitted that Mr Andrews was not independent, and was, in effect, giving a biased opinion.

Discussion and conclusions

32. There is not a plethora of evidence to assist in the task of assessing whether the value of the appeal property has been adversely affected by the scheme.

33. I have ignored any impact as a result of the programme of works that implemented the scheme, as Mr Brown has already been compensated for this. Mr Davies's evidence was that the appeal property was in a 1:25 year flood zone before the scheme, and this would remain the case after the scheme, but would be improved to 1:100 year if Mr Brown used the flood gate which had been offered to him.

34. I was troubled by several aspects of Mr Andrews' evidence. He said in oral evidence that he was aware of several comparables which might have been of assistance in reinforcing his opinion, but had not amended his expert report to include them, as he had been directed by his instructing solicitors not to alter his report. That is a fundamental misunderstanding of the role of the expert witness, and is in spite of his confirmation at the end of his report that he had expressed his true and complete professional opinion. A chartered surveyor is obliged to ensure that expert evidence is complete and up to date. Of less concern, there was no reference to the RICS Practice Statement for Expert Witnesses, nor a declaration on the required basis. But my criticism of Mr Andrews does not extend, as Mr Brown submitted, to considering his opinion to be biased.

35. Mr Andrews' report was of little assistance in going to the root of the matter. An opinion of value at March 2012, some three years after the work was completed, was only of limited help. Mr Andrews' report would have been of more assistance had it reflected his complete knowledge, and had it been focussed on the value of the appeal property, before and after the scheme, with reference to comparables. Whilst the sales of the properties either side of the Brenig Villa were not close to the relevant valuation dates, they should in my judgment have at least been mentioned.

36. However, I have placed weight on some aspects of Mr Andrews' opinion evidence. There was a dispute as to the condition and state of modernity of the appeal property. With respect to Mr Brown, I do not consider that his view can be regarded as objective. Mr Andrews said that he carries out numerous house buyers reports and building surveys each year, and I accept his professional opinion that the appeal property required modernisation.

37. There seems to be little dispute as to the value of the property after the scheme had ended. Mr Andrews put the value at around £85,000 to £90,000 in July 2009. Whilst the scheme had not been completed by then, Mr Davies's evidence was that the work immediately behind the appeal property had been completed. Mr Andrews' view of value at March 2012 of £70,000 to £80,000, is consistent with the letter from local agents, dated February 2012, which indicated that they would suggest a marketing price of £75,000 to £80,000.

38. The question is whether the value of the property would have been higher before the work commenced, and whether, if there was a reduction in value, that reduction was as a result of the scheme rather than any change in market conditions.

39. The sale of Glan Rhyd in October 2005 at £120,000 is of limited assistance. I accept Mr Andrews' view that this was about at the top of the market, and that values fell after this, irrespective of any effect of the scheme. Having accepted that the appeal property required some modernisation work, the value of the appeal property at the same date would, in my judgement, have been less than this. Having inspected both properties externally, I am not persuaded that there would have been much if any difference for size, as Mr Brown contended.

40. As regards Nant yr Arian, again limited assistance can be drawn. The letter from the owner suggested that it was put on the market in September 2007 at £132,500 or £135,000, although it was still listed on Zoopla at £132,500 in July 2009. The archive particulars describe it as being in excellent order and nicely modernised, which would suggest that it was in better internal condition than the appeal property. It eventually sold in 2014 for £85,000. I am not satisfied that this provides a reliable indication of a diminution in value owing to the scheme, because the dates are five years apart, and the later sale was many years after the scheme was completed.

41. The average asking price and value figures, derived from on-line comparison websites, must be treated with caution. The graph submitted by Mr Brown is caveated "due to the small amount of data for this graph it may appear to be erratic". It appears to show values for terraced houses in Tregaron slightly lower in mid-2012 than in late 2009, which is consistent with Mr Andrews' view.

42. In July 2008, the average sale price, from only two transactions, was £161,750, but from all of the above evidence these must be superior properties than those in Doldre.

43. In short, there is little empirical evidence in support of the claim. It is therefore necessary to stand back and consider whether there is likely to have been an effect on value. Prior to the works, the appeal property was in a 1:25 year risk of flooding, although Mr Brown's evidence was that it hadn't in fact flooded in over 20 years. The rear of the property looked out onto a stone bank on the other side of the river. Following the work, it looks out onto a fairly tall cast-concrete "stone effect" wall, which in my judgment has a somewhat imposing effect. The prospective purchaser would also be aware that it would be necessary to fit a flood gate, which both Mr Brown and his neighbour found rather heavy, although a lighter version might be available, and the respondent authority had offered to fit it when fitting those either side of the footbridge. The fact that the height of the flood wall on the other side of the river has been increased by over a metre must, in my view, cause the notional prospective purchaser to consider that the appeal property, together with its neighbours, are effectively forming the flood barrier for their side of the river. In my judgment, there would have been an effect on value as a result of the scheme, notwithstanding the flood risk has diminished to 1:100 if the flood gates are installed.

44. Doing the best I can, in my judgement the value of the appeal property would have reduced by a factor of something in the order of 5%. I therefore determine compensation of £5,000.

45. Mr Brown made various complaints against the conduct of the respondent in this case, and highlighted the difficulty he had had in obtaining professional representation. I have not outlined this in any detail as it is irrelevant to the matter I have been asked to determine on the evidence presented.

46. The claim was heard under the Tribunal's simplified procedure, under which costs are only awarded in exceptional circumstances. Neither party submitted that there were any such circumstances and I therefore make no order for costs.

Dated: 17 November 2016

A handwritten signature in black ink, appearing to read 'P D McCrea', with a long horizontal flourish extending to the right.

P D McCrea FRICS