

UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2017] UKUT 208 (LC)
Case No: ACQ/55/2016**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – unoccupied house – condition adversely affecting amenity of neighbourhood – open market value – comparables – deduction for local land charges – cost of property and garden clearance – compensation assessed at £140,000

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

KENNETH GUN WHY

Claimant

- and -

CHELTENHAM BOROUGH COUNCIL

**Acquiring
Authority**

**Re: 30 Pennine Road,
Cheltenham
GL52 4HE**

Determination on Written Representations

No cases are referred to in this decision.

DECISION

Introduction

1. This is a reference made by Cheltenham Borough Council (“the Council”) for the determination of compensation following the compulsory purchase of the house and premises known as 30 Pennine Road, Cheltenham, GL52 4HE. The freehold owner of the property is Mr Kenneth Gun Why.

2. Since 2008 the Council has received complaints that Mr Why had not maintained the property which at all relevant times appears to have been vacant. The gardens were heavily overgrown and there was a general lack of maintenance and security. Neighbours were concerned about the effect on the amenity of the area and the encouragement of anti-social behaviour and vandalism.

3. In a helpful and detailed witness statement Mrs Polly Baker, an Environmental Health Officer with the Council, set out the history of the Council’s involvement with the property and the various actions it had taken to try and resolve the problem. These included (i) protecting the building by boarding and securing both doors and windows by exercising its powers under section 29 of the Local Government and Miscellaneous Provisions Act 1982; and (ii) the clearance of the grounds by a Council appointed contractor following the service of three notices under section 215 of the Town and Country Planning Act 1990 requiring Mr Why to remedy the condition of his land.

4. Nothing was heard from Mr Why after May 2011. The Council repeatedly tried to contact him and affixed notices to the property; placed adverts in a local newspaper and on the internet; and had discussions with both neighbours and the police. The Council’s efforts were to no avail and Mr Why seems to have disappeared. The only permanent solution to the problem was for the Council to compulsorily purchase the property and on 2 March 2015 it made the Cheltenham Borough Council (Land at 30 Pennine Road) Compulsory Purchase Order 2015 which was confirmed by the Council, in the absence of any objections, on 8 October 2015.

5. The Council made a general vesting declaration on 19 April 2016 and took possession of the property on 19 May 2016 which is the valuation date. No claim for compensation was made by Mr Why and on 8 September 2016 the Council referred the matter to the Tribunal for determination. In the absence of any response from Mr Why the reference was allocated to the written representations procedure.

6. Apart from the witness statement of Mrs Baker the Council rely upon a valuation report by Mr Paul Lewis MSc FRICS of Cotswold Surveyors. Although this is not in the form of an expert report compiled in accordance with rule 17(5) of the Tribunal’s Procedure Rules I have found it helpful and give it weight.

Facts

7. The property is located on a local authority residential estate in the Whaddon District of Cheltenham which largely comprises three bedroom semi-detached houses many of which are now in private ownership. No.30 is a corner plot at the junction of Pennine Road and Cotswold Road. There is a small garden at the rear which adjoins the backyard of the former police station to the west beyond which are the grounds of Oakley Primary School. There is a larger garden to the side (south) of the house which extends to Cotswold Road. The former police station is now used as an office by a charity. On the opposite (east) side of Pennine Road is a community hall and car park.

8. The property was developed during the late 1950s as part of the former neighbourhood police station. It is attached to a single-storey part of these premises along approximately half of its southern elevation. Mr Lewis describes the property as a “link detached house”. It is a two-storey building with cavity brickwork and a pitched roof with interlocking concrete tiles.

9. The accommodation comprises an entrance lobby, hall, living room, dining room, kitchen, three double bedrooms and an upstairs bathroom/WC. There is an external store/WC outbuilding and space to park two cars at the front of the property.

10. The Council had registered local land charges amounting to £14,623.80 against the property by the valuation date, being mainly in respect of the costs it incurred in clearing and securing the property. These charges were binding against successive owners at the valuation date. The Council spent a further £7,195 after the valuation date in respect of garden clearance and the clearance of the contents of the house. Photographs taken on the valuation date show that the whole house was full of rubbish which was piled up to 2 metres deep in places. It does not appear that this cost was included in the local land charges.

Valuation

11. Mr Lewis assessed the open market value of the property at £145,000. He reached this figure by considering six comparable sales of two detached and three semi-detached houses in the locality. (I have not taken account of a third detached house comparable which Mr Lewis said was “currently available on the market” when he wrote his report in August 2016.) Mr Lewis preferred the evidence of the sales of semi-detached houses since these were on the same estate as the subject property whereas the detached houses were in better located private housing areas. The average value of the semi-detached comparables was £184,500 and that of the detached houses £268,000. The average of all five comparables was approximately £218,000. Mr Lewis took a value for the subject property in fair condition at £210,000 which reflected its location on a local authority housing estate and also the fact that it was a “linked” detached house, i.e. it was only attached to the neighbouring single storey building along a small length of its side elevation and looked much more like a detached house than a semi-detached one.

12. Having determined the value of the property in fair condition, Mr Lewis then considered its actual condition at the valuation date and deducted an allowance for the estimated costs of repairs

and redecoration. From the photographic evidence it is clear that the property required major work although the structural elements appeared to be generally sound. The necessary works included the renewal of old/defective electrical wiring, replacement central heating, a new kitchen and bathroom, new windows and doors and numerous items of repair to damaged floor, wall and ceiling surfaces. Mr Lewis estimated a minimum expenditure of £50,000 would be required. Deducting that amount from the fair value gave a figure of £160,000 for the property in its actual condition.

13. Finally, Mr Lewis deducted the local land charges, rounded to £15,000, to give an open market value of £145,000.

14. At the request of the Tribunal Mr Lewis was asked to consider whether there might be any hope value for redevelopment at the site given that the property occupied a large corner plot. In a response dated 5 April 2017 Mr Ben Gisborne MRICS, a colleague of Mr Lewis at Cotswold Surveyors, said that following discussions with the local planning authority and having undertaken a number of alternative residual valuations the only possible viable redevelopment was what he described as the construction of four, one-bedroom back to back style houses. That would be a difficult scheme to design and deliver and as the viability was marginal he did not consider there to be any hope value for development and was satisfied that £145,000 was the appropriate open market value.

Determination

15. I am satisfied from the evidence that the figure of £210,000 for the open market value of the property in fair condition is a reasonable estimate. Mr Lewis's allowance of £50,000 for the cost of repairs, redecoration and re-fitting was not costed in detail but from the photographic evidence I think it is a realistic figure. I also think Mr Lewis was correct to deduct the total (rounded) amount of the local land charges to give a net figure of £145,000.

16. I accept there is no hope value for redevelopment of the site given the comments of the local planning authority and its desire to maintain the established building line along Pennine Road.

17. I would also deduct £5,000 to allow for the cost of clearing the house and garden at the valuation date, making a revised figure of £140,000 which I determine to be the open market value of the property.

18. Mr Why does not qualify for a home loss payment as he was not in occupation of the dwelling as his only or main residence throughout the period of one year ending with the valuation date. There is no claim for disturbance and I therefore determine the compensation payable in the total sum of £140,000.

Dated: 24 May 2017

A handwritten signature in black ink, appearing to read 'A J Trott', with a large, sweeping flourish extending to the left and a horizontal line underneath.

A J Trott FRICS