

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



Neutral Citation Number: [2019] UKUT 370 (LC)
Case No: ACQ/294/2019

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 – draft consent order - compensation determined at £28,000 – section 15, Compulsory Purchase Act 1965

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN :

BANK OF SCOTLAND PLC

Claimant

- and -

BURNLEY BOROUGH COUNCIL

Acquiring
Authority

Re: 20 Paulhan Street
Burnley
Lancashire
BB10 1ET

Peter D McCrea FRICS

Determination by Written Representations

Introduction

1. On 5 April 2007 Mr Javaid Ramzan purchased the long leasehold interest in 20 Paulhan Street, Burnley, Lancashire, BB10 1ET (“the reference property”) for £62,000. Funding for the purchase was provided by the claimant, Bank of Scotland PLC, which took a first legal charge over the property.
2. After purchase, the reference property was let out until July 2014, after which it remained vacant, gradually deteriorating in condition, until dry rot and other disrepair began to affect neighbouring properties. On 3 November 2017, Burnley Borough Council (“the acquiring authority”) confirmed the Burnley (20 Paulhan Street, Burnley) Compulsory Purchase Order 2017 (“the CPO”) made under section 17 of the Housing Act 1985.
3. On 16 November 2017 the acquiring authority made a General Vesting Declaration pursuant to the CPO, under which the long leasehold interest in the reference property was vested in the authority on 20 February 2018, which is the valuation date.
4. There is no significant dispute between the claimant and the acquiring authority as to the compensation payable under this reference but because on either party’s case the value is significantly below the outstanding mortgage debt, and since Mr Ramzan has not agreed the value, nor indeed engaged in any negotiations, section 15 of the Compulsory Purchase Act 1965 is engaged. This 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.

...”

5. In the absence of Mr Ramzan’s agreement, the compensation to be paid has been referred to the Tribunal for determination. Mr Ramzan did respond in one initial email, and the claimant has submitted evidence that he signed for recorded delivery correspondence. I am therefore satisfied that he has chosen not to engage in any negotiations or take part in this reference.

Facts

6. From the evidence I find the following facts.
7. The reference property is an inner-terrace two bedroomed house, of gritstone walls under a blue slate roof. It has a small forecourt front garden, and a rear yard. It is located in the Queensgate area of Burnley, in a terrace of very similar late 19th/early 20th century terraced houses. The property is close to Colne Road, the main arterial/bus route linking Burnley and

Nelson. Nearby there is the Burnley General Hospital, the Queensgate bus depot, a public house, and a golf driving range.

8. The approximate gross external area is 93.5 sqm over two storeys, comprising a living room, dining room and kitchen on the ground floor, with two bedrooms and a bathroom on the first floor. At the valuation date, the property was in very poor repair, suffering from rising damp and dry rot.

9. The property was held on a 999-year ground lease dated 20 April 1911, I assume at a peppercorn rent.

Evidence

10. Written expert evidence was submitted by Margaret Rutherford MRICS, a Principal Development Surveyor at the acquiring authority, and by Matthew Parkinson MRICS, a partner in Lea Hough and Co, Chartered Surveyors. Both are RICS Registered Valuers.

11. Ms Rutherford said that she had inspected the property on 29 June 2017 and again on the valuation date, when the property was severely affected by rising damp and dry rot, which had caused the floor to the ground floor front room to collapse.

12. Ms Rutherford used two methods to arrive at her opinion of value. First, her evidence was that well modernised properties in the vicinity sold for £57-67,000 in the two-three year period before the valuation date and that, if modernised, the appeal property might sell for up to £62,000, from which she deducted £35,000 for refurbishment costs (she said that £35,000 was the typical cost of refurbishing similar properties under the Council's Empty Homes Programme), to arrive at a value of £27,000 to reflect condition. Secondly, she referred to the sale of 44 Kyan Street, a nearby property which was in similar condition to the reference property, and which sold for £32,000 in July 2018. It required upgrading but was not suffering from damp and dry rot. She therefore deducted £5,000 to reflect this, again arriving at £27,000.

13. Mr Parkinson valued the reference property at £30,000. He had not had the opportunity to inspect the property and had taken some of Ms Rutherford's evidence as read. He relied upon a range of evidence of sale prices for similar properties, from £32,000 to £57,000 dependent primarily on condition. In his opinion, once refurbished the property would be worth £60-£65,000. His view of the refurbishment costs was in the order of £25-£30,000, and accordingly he put a value of £30,000 on the property in its condition at the valuation date.

14. However, some more tangible evidence was available to both valuers. Following acquisition, the acquiring authority refurbished the property at a tendered cost of £39,354.18, after which it was sold to Calico Homes at £64,944.53 on 15 February 2019. It is not known whether the sale to Calico Homes was on a freehold basis, but neither valuer takes a point on this, nor adjusted their values in the light of this evidence.

Discussion

15. As outlined above, there is a significant amount of common ground, however I prefer Ms Rutherford's figure. First, because she had inspected the reference property on the valuation date, whereas Mr Parkinson had not. Secondly, the actual value achieved, albeit a

year after the valuation date, would point to a lower, £25,590, rather than higher figure after a deduction of the actual tendered costs. However, since there is no evidence as to how values, or indeed costs, changed over the period, I do not consider it appropriate to further reduce Ms Rutherford's figure. In my opinion, the value of the reference property was £27,000.

16. On 2 December 2019 the Tribunal received a draft consent order from the parties, in which compensation was agreed at £28,000 plus interest at 0.25% per annum. It is not open to the parties to reach such an agreement. Section 15 of the 1965 Act requires a determination to be made by the Tribunal, not least so that the unrepresented mortgagor's interest is protected. However, in these circumstances Mr Ramzan benefits from a higher amount being agreed, as the remaining outstanding debt would reduce. Accordingly, whilst in the absence of the draft consent order I would have determined that the compensation payable to the claimant was £27,000 plus statutory interest, in the light of the draft consent order I am content to adopt the parties' agree figure, and I determine compensation at £28,000.

Disposal

17. A payment of £28,000 plus statutory interest shall be made by the acquiring authority to the claimant under paragraph 15(2) of the Compulsory Purchase Act 1965 in part satisfaction of the mortgage debt secured by the charge on the reference property.

18. This decision is final on all matters other than the costs of the reference. The draft consent order did not make any reference to costs, and I assume none are claimed. If that is not the case, the parties may now make further submissions on costs, and a letter giving directions for the exchange and service of submissions accompanies this decision.

Dated: 6 December 2019



Peter D McCrea FRICS