



ACQ/145/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – acquisition of shop and premises in connection with shopping development – valuation – disturbance – extinguishment of business – compensation awarded £100,000

IN THE MATTER of a NOTICE OF REFERENCE

BETWEEN

KARAN SINGH LATHAR

Claimant

and

SANDWELL METROPOLITAN DISTRICT COUNCIL

**Acquiring
Authority**

Re: 13 Cape Hill, Smethwick, West Midlands B66 4RX

Before: P R Francis FRICS

**Sitting at: Birmingham Civil Justice Centre
33 Bull Street, Birmingham B4 6DS**

**on
18 September 2007**

Mr K S Lathar, the claimant in person
Peter Goatley, instructed by Head of Legal Services, Sandwell MBC, for the acquiring authority

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DECISION

1. This is a decision to determine the amount of compensation payable by Sandwell Metropolitan Borough Council (the council) under the Sandwell (Cape Hill Town Centre, Smethwick) Compulsory Purchase Order 2002 (the CPO) to Karan Singh Lathar (the claimant), in respect of the compulsory acquisition of 13 Cape Hill, Smethwick (the subject premises).

2. Mr Lathar appeared for himself and relied in part upon written estimates of value from two local estate agents in connection with the claimed value of the premises at £220,000, and his own knowledge in the assessment of the value attributable to the extinguishment of his business, and other items of disturbance which amounted to a further £45,000. Mr Peter Goatley of counsel appeared for the acquiring authority, who had offered compensation in the total sum of £100,000 being £95,750 for the premises and £4,282 for disturbance. He called Mr John Robert Norton Page BSc (Est Man) FRICS who gave valuation evidence.

Facts

3. The parties had been unable to agree a statement of facts and issues to be determined, but from the claimant's statement of case, the council's reply and the report of Mr Page, together with the evidence at the hearing and my inspection of the former location of the subject property on the afternoon of 18 September 2007, I find the following facts. The subject property was a two-storey late Victorian shop and premises constructed of brick under pitched and slated roofs, and was situated in a terrace of similar units just west of a major junction of Cape Hill, Waterloo Road, and Shireland Road. That confluence of roads served as the main central shopping area of Cape Hill, itself a suburb of Smethwick, approximately midway between Birmingham City Centre (2.75 miles) and West Bromwich (3 miles).

4. The premises contained a ground floor retail area of 17.48 sq m, together with an office of 12.7 sq m, part open fronted store (6.93 sq m), corridor/kitchen area (5.72 sq m) and a further store of 4.89 sq m with wc. There was a small yard area to the rear. The first floor, which was utilised for storage, contained two rooms totalling 26.52 sq m, together with a landing area of 1.8 sq m. The premises had a total area, in terms of Zone A, of 31.04 sq m.

5. Trading was undertaken by the claimant and his wife between 1978 and 2002, for the majority of the time as two businesses. No trading was effected between 2002 and the valuation date, apart from a period of 15 days immediately prior to possession being taken.

6. Following an application for planning permission for a new retail development (now known as the Windmill Retail Park) upon land that included the claimant's premises in 2001, the council entered into a Development Agreement with Figurevale Limited (the property arm of Modus Builders) on 2 April 2002. The CPO was made on 25 April 2002 and was confirmed by the Secretary of State on 13 July 2003. On 4 September 2003 notice of confirmation and

intention to vest was served upon Mr Lathar, and on 27 November 2003 he was provided with the council's intended timetable in which it was stated that the estimated date by which the premises would be required was April 2004. The General Vesting Declaration was executed on 28 April 2004, notice of vesting was served on 6 May 2004 and a certificate certifying a vesting date of 9 June 2004 was served on 12 May 2004. Possession was taken on 9 June 2004, which is the valuation date for the purposes of this reference. The council received a formal claim for compensation from Mr Lathar on 14 June 2004. As the parties were unable to agree appropriate compensation, a Notice of Reference was submitted to this Tribunal by the council on 14 September 2006.

Issues

7. The issues for determination are the value of the freehold interest in the subject premises at 9 June 2004 (Rule (2), section 5, Land Compensation Act 1961 (the Act)), and disturbance under Rule (6) of the Act.

Claimant's case

8. Mr Lathar said that he acquired the subject premises in 1977, from where his wife traded continuously as Ultra Fashions between 1978 and 2000, when the business ceased due to her illness. He had personally operated an insurance agency (K S Lathar, Financial Advisor) from a partitioned off room at the rear of the shop between 1981 and 2002, and produced a letter from his accountant confirming the trading periods for the two businesses. When the fashion shop closed, Mr Lathar said that he transferred the stock to his home, and utilised a garage for storage in anticipation that the business would recommence when his wife had recovered. At the end of May 2004, some 16 days before possession was taken, Mr Lathar said that he restocked the shop with the intention that the business would continue but, due to the CPO, he was forcefully dispossessed on 9 June 2004.

9. It had also been his intention, he said, that his daughter would occupy the first floor to operate a solicitor's practice as she was then on the point of qualifying, and he had some repair and conversion works undertaken including re-plastering of walls, provision of a suspended ceiling and a new window to the front. However, he accepted that historically the first floor had been used solely for storage in connection with the shop, and he neither applied for, nor made any inquiries as to whether or not planning permission for office use would be forthcoming. He said that he considered that there was plenty of time for the requisite consents to be obtained before his daughter, who is now operating from his home, actually needed to take up occupation.

10. Mr Lathar said that when the council announced its intentions to redevelop the area, he objected in the strongest possible terms. He also lodged objections to the planning application but did not, he admitted, formally object to the CPO. He said that he was initially offered £58,000 for his shop and business, and the council only increased that offer to £100,000 some 15 months after the first offer had been made. He commissioned valuations from Liberty Mortgages, who operate from premises on the corner of Cape Hill and Windmill Lane, from

Properties Plus of Bearwood Birmingham and from Property Link, Chartered Surveyors of Sparkhill. They indicated values (for the premises alone) of £230,000, £245,000 and £200,000 respectively at the valuation date, and Liberty stated that “no properties in Cape Hill sold in 2004 for less than £200,000”. Mr Lathar referred to 42 Cape Hill, sold in March 2004 at £375,000 and 93 Cape Hill, sold for £272,000 in July 2004, and said that the value of his property should, therefore, not be less than £200,000.

11. As to the value of the business, he said that he had built up considerable goodwill over the 22 years or so that the businesses had been operating, but admitted that he had not been trading from the subject premises at all since 2002, until just before possession was taken. He admitted that, as well as transferring the old stock from his home back into the shop in May 2004, he also purchased new stock. He accepted in cross-examination, that the re-stocking took place after the notice of the GVD had been served, and that he was aware possession of the premises was imminent. Mr Lathar produced no accounts to support his claim for business extinguishment, but included within his bundle of documents his self-assessment tax returns for the years ending 5 April 2001 to 2004. For the year to 5 April 2001, the business was described as Insurance Agent, showing a turnover of £932, expenses of £356 and a net profit of £576. Under the same business description, the figures for the following year were income of £794, expenses of £357 and profit of £437. Two self-employment returns were shown for the year ended 5 April 2003: The Insurance Agent business declared income of £584, expenses of £300 and a net profit of £284. The Ladies and Children’s Fashions business declared income of £1,598, expenses of £686 and a profit of £912. The only business declared if the year ended 5 April 2004 was Ladies and Children’s Fashions, having a turnover of £236, expenditure of £119 and a net profit of £117. A letter was produced that confirmed no losses had occurred in the period 1978 to 2002. In response to a question from me, Mr Lathar said that although he accepted that he had not been formally trading from the subject premises since 2002, he “might have done bits and pieces [of trading] during the period [between 2002 and 2004].”

12. Mr Lathar said that he had built up a successful and profitable business over many years, and goodwill would not immediately disappear as soon as trading ceased. He said that he thought he could have re-opened the shop at any time, and that goodwill, which he estimated at £25,000, would still have been there had it not been for the compulsory acquisition. He also claimed £14,622 for fixtures and fittings within the premises, equipment and loss on forced sale of furnishings and stock, £710 for van hire and labour for moving stock and furnishings, cost of erecting a shed at his home for the storage of stock, and a £400 loss on the forced sale of an industrial sewing machine. £3,100 was claimed for loss of the ability to let his garage, which was also used for stock, for 155 weeks at £20 per week, and £1,407 being alleged value of stock that he had been “forced to donate to the British Heart Foundation”. Disturbance amounted, in total, to £44,489 which Mr Lathar rounded to £45,000, but during the hearing he withdrew the claim for the stock given to charity. It was accepted that no invoices had been produced for any of the stock, fixtures fittings, equipment or labour and that the estimate for the value of the goodwill was a “rough figure”.

Acquiring Authority’s case

13. Mr Page is a chartered surveyor with over 30 years experience in the valuation of property, having joined the Valuation Office (now the Valuation Office Agency) in 1976. He

said he had been primarily responsible for the acquisition of freehold and leasehold interests in properties affected by the scheme, and for the settlement of compensation claims relating to it. As to the subject property, he said it was located in a terrace that, at the relevant time, was generally run down in appearance and included two vacant and derelict shops (nos 5 & 9 Cape Hill). No 13 was also in poor order and required renewal of the roof, the demolition and rebuilding of the rear store, refurbishment of the kitchen, new plumbing, wiring and redecoration. He produced a series of colour photographs taken on the day possession was obtained. As to the property's location, Mr Page said that he did not agree with the claimant's opinion that the shop was in a prime trading position. He said that the whole of Cape Hill, being a satellite, non town-centre shopping area was secondary, and his analysis of comparable properties showed the highest values to be in an easterly direction along Cape Hill from its junction with Shireland Road to approximately no 87 on the northern side. The subject property was, he said, just off the best pitch, but was in a better location than the units in Shireland Road and Waterloo Road.

14. A large number of transactions were analysed by Mr Page, including sales, where the relevant details were derived from information supplied by the Land Registry, and from discussions with the agents who were involved. He also provided detailed analyses of all the comparable settlements that he had agreed on other properties required in connection with the scheme, where the valuation date was the same as in the instant case. Mr Page explained that, in using the common methodology for analysing sales – to produce an overall area “in terms of Zone A” (ITZA), difficulties could be encountered where upper floors were used for residential purposes. He said that, where that was the case, he had simply divided the area in terms of Zone A for the ground floor by the purchase price which, in effect, gives an increased figure which is of benefit to the claimant.

15. Mr Page said that he had valued the subject property at £95,750, which worked out at £3,085 per sq m ITZA. His analysis of the open market sales transactions ranged between £1,065 per sq m ITZA (36 Waterloo Road, good condition, sold May 2002) to £4,239 (66 Cape Hill, good condition and fully modernised, also sold May 2002). 42 Cape Hill, which had been referred to by the claimant, was 3 times the size of the subject property, and sold in March 2004 at £375,000, or £3,815 per sq m ITZA. 40 Cape Hill, a similar property but further off-centre and slightly larger than no 13, had been sold in March 2003 at £1,495 per sq m ITZA, and re-sold in 2006 at £3,360 per sq m ITZA. The vast majority of sales had been in the £1,300 to £1,700 per sq m band and Mr Page said that, on the basis of all the sales evidence, just over £3,000 per sq m for the subject property was, if anything, generous. The same could be said for the scheme-connected settlements, where all of the transactions, including those in the immediate vicinity of the subject premises, analysed at between £2,300 and £2,700 per sq m ITZA.

16. Regarding disturbance, Mr Page said that as trading from the subject property ceased some time before the valuation date, any goodwill that may have been attributable to the business would have dissipated. The self-assessment tax returns confirmed that there was no significant business being undertaken prior to the date of vesting, and certainly not enough to generate any value in terms of goodwill. The fact that the claimant had re-commenced trading after the service of the vesting declaration did not create any value, and Mr Page said that he

was at a loss to understand why Mr Lathar re-stocked the premises in the full knowledge that he was about to be dispossessed.

17. Turning to the other items claimed, Mr Page said that he had provisionally agreed with a Mr A J Cox, the claimant's formerly appointed agent, that the majority of the items amounting to £6,059 on the first two pages of Mr Lathar's hand-written claim either formed part of the property to be included in the value of the freehold interest, could have been removed and sold (eg a television), or had no value. As to the stock, he accepted that despite his concerns as to the reasons the shop had been re-stocked, and as to why the old stock had been stored at the claimant's own home for so long, he was prepared to offer 37.5% (estimated forced sale value) of the £6,282 claimed. That amounted to £2,570. He also said that he was prepared to accept a further £1,712 being the loss on the sale of stock between 15 May and 9 June 2004.

18. None of the other items claimed were accepted, and Mr Page said that if loss on forced sale of the stock was allowed, charges for storage and loss of alternative use of the claimant's garage was unjustified and in any event would amount to double counting.

Conclusions

19. I consider Mr Lathar's claim to be substantially overstated and, as to the value of the premises, without foundation. Having previously appointed an agent to act on his behalf, and commissioned valuations from 3 local agents, none of them produced expert witness reports and the agent, Mr Cox, produced only a brief witness statement which did not express a view as to value other than concurring with the comments in the 3 valuations referred to. In his statement Mr Cox said "I have never been disinstructed, I remain involved on behalf of the claimant. It was the claimant's decision to conduct his own appeal for the purposes of the Lands Tribunal hearing." I find I can attach no weight to the opinions given by any of the claimant's advisers, none of whom were called, whereas I am entirely satisfied that Mr Page, for the council, has produced a fully reasoned and thoroughly professional expert witness report. His detailed and comprehensive analyses of both open market sales, and scheme related settlements are persuasive and, in my judgment, clearly point to a value of the freehold interest in the subject property at June 2004 of less than £100,000. I agree that, on the basis of the schedules that Mr Page produced, his valuation at just over £3,000 per sq m ITZA appears, if anything, generous, and I accept it. I also accept that no value can be attributed to the claimant's intention to utilise the first floor as office space as no planning consent had been sought or enquiries made of the local planning authority.

20. As to disturbance, I agree with Mr Page that the claim for goodwill relating to the claimant's former businesses must fail. Trading had ceased long before the valuation date and, with no accounts being produced, I cannot attach any weight to the income, expenditure and profit figures set out in the tax returns. In any event, profits shown at only a few hundred pounds a year, even if they had been derived from trading through the premises would not, in my view, have been sufficient to provide any value in terms of goodwill. Mr Lathar accepted that the two businesses ceased trading from the premises in 2000 and 2002 respectively, and Ultra Fashions only re-commenced trading at 13 Cape Hill less than 1 month before possession was due to be taken. It is not for me to speculate as to why the claimant would have gone to

the trouble of re-stocking the shop at a time when he was fully aware of the impending acquisition, but in valuation terms, I conclude that the re-establishment of trading for that short period would not generate saleable goodwill and I agree that any goodwill that might have existed when the former businesses closed down would have dissipated.

21. In connection with the remaining items of disturbance, I accept Mr Page's reasoning and reject the claimant's arguments. With a figure having been offered for loss on forced sale of stock it would, in my view, be inappropriate to allow the claim for storage, the shed, and labour/van hire associated with re-stocking the shop. I therefore accept that disturbance payable under Rule (6) of the Act should be no more than the £4,282 offered by the council.

22. This decision disposes of the substantive issues in this reference and I determine compensation for the compulsory acquisition of the subject premises under Rule (2) at £95,750 and for disturbance under Rule (6) at £4,282 making a total of £100,032 – say £100,000. The decision will become final when, and not before, the question of costs is decided, and the accompanying letter sets out the procedure for making written submissions.

DATED 2 October 2007

(Signed)

P R Francis FRICS