



ACQ/26/2007

**LANDS TRIBUNAL ACT 1949**

*COMPULSORY PURCHASE – compensation – preliminary issue – whether claim statute-barred – plot consisting in part of highway, in part of private forecourt – date of entry – held acquiring authority had failed to show entry more than 6 years before notice of reference*

**IN THE MATTER OF A NOTICE OF REFERENCE**

**BETWEEN**

**TERENCE WELFORD**

**Claimant**

**and**

**TRANSPORT FOR LONDON**

**Acquiring  
Authority**

**Re: Office warehouse land and premises  
World Wide House  
Lanrick Road  
London E14 0JF**

**Before: The President**

**Sitting at Procession House, 110 New Bridge, London EC4V 6JL  
on 11 January 2008**

*Christiaan Zwart* instructed by Hughmans for the claimant  
*Alexander Booth* instructed by Eversheds for the acquiring authority

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The following cases are referred to in this decision:

*Hillingdon London Borough Council v ARC Ltd* [1999] Ch 139

*Burson v Wantage RDC* (1974) 27 P & CR 556

*Standish v Liverpool Corn* (1825) 1 Drew 1

*Farmer v Waterloo and City Railway Co* [1895] 1 Ch 527

*Rolls v St Georges, Southwark* (1880) 14 Ch D 785

The following further cases were referred to in argument:

*Simmonds v Kent County Council* [1990] EGLR 227

*Birmingham Corp'n v West Midland Baptist (Trust) Association Inc* [1970] AC 874

*R v Basildon District Council, exp Martin Grant Homes Ltd* (1986) 53 P & CR 397

## DECISION ON A PRELIMINARY ISSUE

1. The preliminary issue that I have to determine is whether the reference in this case is statute-barred. It relates to a small piece of land included in the A13 Trunk Road (Ironbridge to Canning Town Improvement) Compulsory Purchase Order (No PS 13) 1998. Identified in the CPO as plot 24 it is 154 metres in area and consists of part of the forecourt of a building known as World Wide House and half the width of Lanrick Road, which abuts the forecourt. The land was owned by the claimant. A company known as World Class Gifts Limited leased world Wide House from the claimant and operated a business from the premises. Notice to treat was served on the claimant on 27 January 1999. Notice of entry was served on 13 December 1999, and by letter to the claimant dated 10 October 2000 the acquiring authority stated their intention to enter on and take possession of the land on 27 November 2000 between 9 am and noon. Notice of reference to this Tribunal was sent on 22 February 2007. It stated that the acquiring authority had entered on the land on 27 February 2001. The authority say that they entered on 27 November 2000 or at any rate no later than January 2001.

2. Under the Court of Appeal decision in *Hillingdon London Borough Council v ARC Ltd* [1999] Ch 139 a claim for compensation becomes statute-barred under section 9(1) of the Limitation Act 1980 if reference to the Lands Tribunal is not made within 6 years of entry onto the land by the acquiring authority pursuant to section 11 of the Compulsory Purchase Act 1965. The acquiring authority say that notice of reference was given more than 6 years after entry, and the claim is therefore statute-barred. The claimant says that notice of reference was given within the statutory period. Alternatively he says that the acquiring authority are estopped from denying that entry was taken on 27 February 2001 and therefore from relying on the Limitation Act.

3. There was a short agreed statement of facts, and I heard evidence from Leonard Reginald Smith and Roger William Moore on behalf of the acquiring authority and from the claimant. Witness statements of all three witnesses had been filed, and these exhibited documents of relevance.

4. Mr Smith said that he was a principal engineer for Halcrow Group Limited, consulting engineers, and had been seconded to work on the A13 Design Build Finance and Operate Project first for the Highways Authority and then for Transport for London when they took over the scheme in 2000. His responsibilities included overseeing the land acquisition for the whole A13 DBFO Project and he also had the management responsibility for the A13 Trunk Road (Iron Bridge to Canning Town Improvement) Scheme. He said that the authority's records showed that possession of plot 24 was taken on 27 November 2000. The land entry schedule, prepared in June 2001 by Gary Bowers, a consultant in Mr Smith's team, showed that entry was taken on that date by another member of his team, Neil Carman, in accordance with the letter that he, Mr Smith had sent on 10 October 2000. An e-mail from Mr Carman of 24 November 2000 to Mr Bowers and a Mr Wright had attached to it a list of all the plots of which possession was to be taken on 27 November, and plot 24 was one of these. Mr Carman was no longer employed by or on behalf of the authority and was not available to give evidence.

5. Mr Smith produced a copy of a letter of 12 January 2001 from Graeme Howard of the construction company RMG (A13) Construction JV to Gary Branton of the London Borough of Tower Hamlets, who countersigned the letter on that date as agreed. It related to “A13 DBFO – Lanrick Road”, and it enclosed a drawing showing the proposed layout for temporary traffic lights to enable the construction of a new sewer and manholes. The letter said that the works were due to commence on Monday 12 January. Mr Smith explained the drawing, which showed a section of Lanrick Road coned off for half its width with temporary traffic lights at either end of the section, which extended round the subject land. He said that the diversion of Lanrick Road was the first of the key stages for allowing a sewer to be relaid. Mr Smith also produced a photograph, taken on 23 January 2001 looking north-eastwards along Lanrick Road to World Wide House. This showed the north-west side of the road coned off as shown on the drawing, with timber baulks and fencing for part of the length. It also showed a JCB with its back bucket elevated and having material suspended from it, and a number of workmen in yellow jackets and helmets. Mr Smith said this activity was taking place on plot 24. He thought that the work was completed in February. In cross-examination he said that he had no documentary evidence to show when the works were completed.

6. Mr Smith also produced a letter dated 4 June 2001 from Vivienne Savic of World Class Gifts Ltd in relation to the company’s claim for compensation from the acquiring authority. In it, Mrs Savic said:

“... My company was extinguished in December 2000 in order that the A13 road scheme could commence. We disposed of all stock and fittings and vacated the company premises as requested on January 12 so that works could begin. ...”

7. Mr Welford said that it was quite apparent from the deed of surrender that the acquiring authority did not take physical possession of the forecourt or any part of the land at World Wide House until 27 February 2001. While World Wide Gifts might have left the premises empty, as stated in Mrs Savic’s letter of 4 June 2001, the keys were not handed back to the authority until 27 February 2001. Mr Welford referred to an expert report of Mr Moore dated 20 September 2002 and prepared on behalf of the acquiring authority for the purpose of the Lands Tribunal claim by World Wide Gifts and a letter dated 22 June 2001 from Mr Moore to the World Wide Gifts’ valuer, Mr R Cobb of GL Hearn. Both these documents, he said, confirmed 27 February 2001 as the date of entry.

8. The photograph taken on 23 January 2001 did not, Mr Welford said, show any works being carried out on the forecourt. It showed a JCB on the road, not the forecourt, and the JCB was at least 100 feet closer to the photographer than the World Wide House warehouse, which was 30 feet high but had the same apparent height as the raised arm of the digger. He referred to another photograph that showed the roller shutter door on the eastern end of the warehouse. The only access to this was across the forecourt. There had been a 3-foot wall around the site, but this was demolished in order to enable articulated vehicles to manoeuvre without damaging themselves. In cross-examination he said the vehicles might have manoeuvred across the pavement also. At the time in question, he said, one of his sisters used to have a nearby café and he used to go round most days to have his breakfast there. The traffic management in Lanrick Road was installed a long time before the works were carried out.

9. In his evidence, Mr Moore had referred to the report relied on by Mr Welford. He pointed out that in it he had said:

“2.3.5 Entry was taken onto plot 24 with effect from 27 November 2000, but the claimant continued to operate from the premises at World Wide House until 27 February 2001...

3.1.2 Although Notice to Enter was served on 10 October 2000, and entry was taken out the plots needed for the scheme on 27 November 2000, the claimant continued to use the premises while the business was run down, using the warehouse and the offices.

3.1.3 I met the claimant’s director, Mrs Savic, on site at noon on 27 February 2001 when she gave me the keys and I formally took possession of the property.”

10. Mr Moore said that it had always been entirely clear to him that possession was taken of plot 24 on 27 November 2000. Moreover this had been accepted by Mr Cobb, the claimant’s expert, albeit in the proceedings relating to the claim by World Wide Gifts. In his report Mr Cobb said:

“World Class Gifts Ltd then took a step to close the business with a technical cessation on 30 November 2000. The claim items were submitted thereafter, as they were incurred or established ...

Entry was taken onto Plot 24 with effect from 27 November 2000 ...

Following the occupation of Plot 24 on 27 November 2000 World Class Gifts Ltd was unable to operate as a business due to the loss of forecourt and the inability to receive imported goods. From this date to 27 February 2001, the Directors of World Class Gifts Ltd used the premises, occasionally and in part, for the purposes of running down the business.”

11. For the acquiring authority Mr Alexander Booth submitted that the documentary evidence was sufficient to establish that the acquiring authority had entered and taken possession of plot 24 on 27 November 2000. Alternatively the evidence of Mr Smith established that works for the laying of the sewer across plot 24 took place in January 2001, so that entry must have taken place before then. The claim was accordingly statute-barred.

12. For the claimant Mr Christiaan Zwart directed his submissions to the wording of section 11(1) of the 1965 Act, since it was that that established when the cause of action accrued for the purpose of the Limitation Act:

“If the acquiring authority have served notice to treat in respect of any of the land and have served on the owner, lessee and occupier of the land not less than 14 days notice, the acquiring authority may enter on and take possession of that land ...”.

What the wording made clear, Mr Zwart, said was that there were two separate requirements that had to be fulfilled before the cause of action accrued. The provision differentiated between “enter” and “take” possession. Before the cause of action arose it was necessary for the acquiring authority to have both entered on and taken possession of the land. Merely to have entered was not enough. When, in *Hillingdon* at paragraph 34, Potter LJ referred to “the right or cause of action which arises on entry by the authority” he was adopting a shorthand way of stating the statutory requirements.

13. Mr Zwart submitted that the distinction between entry and taking possession was established in a number of cases. In *Burson v Wantage RDC* (1974) 27 P & CR 556 the Lands Tribunal (V G Wellings QC) held that the making of an access through a hedge onto the subject land and the erection of a small office did not constitute taking possession. In *Standish v Liverpool Corpn* (1825) 1 Drew 1 in the Chancery Court Kindersley VC held that where the acquiring authority’s contractors, without the knowledge of the authority but with the assent of the occupying tenants, had brought some wagons and rails and other implements on the land and had left them there, this did not amount to taking possession. On the other hand in *Farmer v Waterloo and City Railway Co* [1895] 1 Ch 527 Kekewich J held that boring through the plaintiff’s subsoil pursuant to statutory powers enabling the company to “appropriate and use the subsoil and under-surface” was taking of land for the purpose of the Lands Clauses Consolidation Act 1845. In the present case, however, there was no evidence of boring into the subsoil of plot 24.

14. A further argument was advanced by Mr Zwart. He said that plot 24 appeared to be subsoil beneath the highway. The top two spits were the highway land, and he did not understand this to have vested in the authority. The evidence, he said, did not establish matters other than in relation to the highway land in contrast with the subsoil land.

15. Mr Zwart said the documentary evidence did not show that any physical acts had taken place on 27 November 2000 that amounted to a taking of possession. The evidence in relation to January 2001 similarly did not show that any physical interference with the claimant’s land occurred at that time. There was no evidence about the sewer or the manhole works, and the photograph showed a JCB on highway land. The only works consisted of temporary traffic lights and signs. Mr Smith must have been mistaken about the timing of the works, Mr Zwart suggested, because a traffic management certificate relating to the temporary traffic lights in Lanrick Road was dated 6 February 2001.

16. Finally Mr Zwart referred to a deed of surrender dated 29 June 2001 by which the claimant and the acquiring authority released each other from their obligations under the lease of World Wide House, the freehold of which the authority had acquired from World Class Gifts Limited on 27 February 2001. I will refer to the terms of the deed later. Mr Zwart’s submission was that it contained an agreement between the parties that the date of entry was 27 February 2001 and that the acquiring authority was accordingly estopped from contending in these proceedings for any other date.

17. Mr Booth said that Mr Zwart's argument that the top two spits of that part of plot 24 lying outside the forecourt were highway land, so that works on them would not constitute entry onto the claimant's land was being advanced for the first time on the day of the hearing. He asked that they should be allowed to investigate the position and to make further representations on it writing if so advised after the hearing. I agreed to this course being followed, and between 31 January and 7 February 2008, I received further material from the parties. This consisted, on the part of the acquiring authority, of a further witness statement by Mr Smith, to which was exhibited a copy of the A13 Trunk Road (Ironbridge to Canning Town Improvement, Side Roads) Order 1998, and further submissions from Mr Booth. The claimant provided a further witness statement by Mr Welford and a witness statement by Nicholas Frazer Cook, a solicitor of the claimant's solicitors firm, and further submissions were advanced. The acquiring authority's solicitors objected to parts of Mr Welford's statement, which, they said, did not relate to the matter of the highway land and which they did not accept as factually correct. I have not had regard to the parts to which objection was taken.

18. The schedule attached to the Side Roads Order includes under "Highways to be stopped up" the entry "An irregular shaped area of Lanrick Road from its junction with the trunk road then northwards then north-eastwards for a distance of 128 metres" and a plan attached to the Order shows the full width of Lanrick Road in the vicinity of and including plot 24 as being stopped up. Mr Smith said that the works that the photograph showed being carried out on 23 January 2001 could not have been carried out unless Lanrick Road had been stopped up pursuant to the terms of the Order. Mr Booth submitted that, when a highway was stopped up, title to the surface of the highway reverted to the owner of the subsoil, and he referred to *Rolls v St Georges, Southwark* (1880) 14 Ch D 785, per James LJ at 796.

19. The acquiring authority's primary case was that entry on the land had taken place on 27 November 2000 as evidenced by their records. The evidence is, in my judgment, however, insufficient to establish this contention. It consists, as I have said of an e-mail of 24 November 2000 from Mr Carman to Mr Bowers and a Mr Wright attaching a list of all the plots of which possession was to be taken on 27 November, of which plot 24 was one, and a land entry schedule, prepared in June 2001 by Mr Bowers stating that entry was taken on that date by Mr Carman. There is no evidence as to what physical acts, if any, were carried out in relation to the land. A mere assertion of possession would not be sufficient to constitute entry, and, in the absence of any evidence of any physical acts of possession, the contention that entry was effected on 27 November 2000 must necessarily fail.

20. Mr Zwart relied on the words in section 11(1), empowering the authority to "enter on and take possession", as showing that entry on the land was not sufficient and that there must also be a taking of possession. I do not think that anything useful is to be derived from the wording of the provision. "Entry" as it has come to be used in the compulsory purchase legislation implies the taking of possession. What constitutes entry will depend on the circumstances, but, in the absence of a formal surrender of possession by the owner (for instance through handing over keys) it must require that some physical act in relation to the land is done for the purpose of effecting the acquisition: see, for example, *BP Oil UK Ltd v Kent County Council* [2003] RVR 118 at paragraphs 17 and 18 (reversed, but not on this point, at [2003] RVR 276). Acts that are referable to some other purpose are not sufficient. Thus in *Standish v Mayor of*

*Liverpool* a contractor who simply left wagons, tram plates and rails on the land by agreement with the owner in advance of beginning the works that he was contracted to carry out for the acquiring authority was held not to have effected entry on behalf of the authority. And entry for the purpose only of surveying and taking levels will not constitute entry because that can be done under the statutory power for that purpose in section 11(3) of the 1965 Act: see *Burson v Wantage*.

21. The alternative contention of the acquiring authority is that entry on the land was made in January 2001 when works for the laying of a sewer in Lanrick Road were carried out. In relation to this contention also I am not satisfied that the authority have made out their case. No drawings of the works were produced to show their exact location, no indication was given of the size of the sewer or the depth at which it was laid, and, most importantly, no documentary evidence was produced to show when the works were carried out. That there were works being carried out in Lanrick Road on 23 January 2001 is clear from the photograph produced by Mr Smith, and the coning off of the north-western side of Lanrick Road and the activity that can be seen within the coned off area clearly suggests that works were about to be carried out within the coned off area. The coned off area appears from the photograph to include the highway land forming part of plot 24, and this is clearly consistent with the traffic management certificate providing for the installation of temporary traffic lights, the northerly set of which is at the northern end of plot 24. The works were for the laying of the sewer, and I find (indeed there is no suggestion otherwise) that this was to be laid in plot 24.

22. I am not satisfied that on 23 January 2001 or at any time before 27 February 2001 the authority had taken possession of any part of plot 24. They may have done so, but Mr Smith was unable to say more than that he thought that the works were completed in February. This, at a distance in time of 7 years and with no documentary record to support it, is insufficient to establish the authority's case. The photographic evidence is, I find, enough to show that on 23 January 2001 the authority's contractors were in control of the coned off part of the highway but insufficient to show that they were in possession of any part of the forecourt. I do not accept, as the authority contend, that the coning off of part of the highway and the presence of contractors on it must have been in pursuance of the stopping-up provisions of the Side Roads Order, so that the surface of the highway would at that time have reverted to the claimant. It could well have been done under other statutory powers. The stopping-up provided for was for the whole of the width of the highway, but the works were carried out with the highway remaining open and temporary traffic signals provided in accordance with a scheme approved for this purpose by the highway authority.

23. In view of these findings, the claimant's case argument on estoppel does not arise. However, had I come to a contrary conclusion on the facts, I would not have accepted this argument. It was founded, as I have said, on a deed of surrender between the claimant and the acquiring authority on 29 June 2001. This related to the lease of World Wide House. The lease was somewhat exiguous. It was undated and signed by Mr Welford and Ms Savic. It said simply "Lease of Tenure – Twenty year Lease commencing 2<sup>nd</sup> May 1989. Rent per annum £10,400 Reviewed every five years." In the deed "the premises" are defined to mean the premises demised by the lease. The "lease" is defined as "the lease or sublease details of which are given in Schedule 1". The lease as produced does not, however, identify the



premises, but Schedule 1 of the deed refers to the premises in the lease as “World Wide House, Lanrick Road, London E14”, and this must, I think, mean World Wide House and its forecourt. It would include, therefore the part of the forecourt included within plot 24. Under the deed the authority surrendered the residue of the term of the lease in consideration of “(a) the sum of £8,320 representing rent due under the Lease from the Date of Entry to the 23<sup>rd</sup> June 2001; (b) the sum of £13,000 representing rent due under the Lease from 24<sup>th</sup> June 2001 to 24<sup>th</sup> December 2001; and (c) the sum of £305 representing the equivalent of empty rate liability of the Premises for a period ending 24<sup>th</sup> December 2001.” The recitals contained this:

“Pursuant to the Compulsory Purchase Order No.P513 1998 (‘CPO’) and TfL having entered into possession of the Premises on or about 27<sup>th</sup> February 2001 (‘Date of Entry’) TfL are in occupation of the premises.”

24. Clause 6 of the deed provided:

“TfL shall have the right to refer to the existence of this Deed when calculating net compensation payable to the Landlord pursuant to or as a consequence of the CPO and may refer to any dispute resolution procedure or the Lands Tribunal to this Deed.”

The claimant’s case is that the deed established that the parties were treating 27 February 2001 as the date of entry for the purposes of the CPO and that the authority are estopped from advancing any other date of entry. The premises included the part of the forecourt contained in plot 24, and therefore, the claimant says, the estoppel applies in relation to the present claim.

25. The deed does not in my judgment give rise to the estoppel claimed. The sole purpose of identifying the date of entry in the deed was to establish the starting date for the calculation of the rent of the premises which the authority were going to pay in consideration of the surrender. It had no other purpose; and I do not think that it is to be inferred that the parties were treating 27 February 2001 as the date of entry for the purpose of assessing compensation in respect of plot 24. The estoppel argument would, therefore, fail.

26. In view of my earlier conclusions, the preliminary issue is determined in the claimant’s favour. The claim is not statute-barred.

27. The parties are now invited to make submissions on costs, and a letter relating to this accompanies this decision, which will only become final when the question of costs has been determined. Further directions in the reference will be given after that.

Dated 11 February 2008

George Bartlett QC, President