

DECISION

Introduction

1. This is a decision to determine the compensation payable by Stratford-on-Avon District Council (the council) to Karol Bogdan Jedynak (the claimant) in respect of the compulsory acquisition of Island Café, 44 Guild Street, Stratford-on-Avon (the subject premises) under the Stratford-on-Avon District Council (Island Café, Stratford-on-Avon) Compulsory Purchase Order 2005 (the CPO).

2. The claimant had inherited the subject premises from his parents, who had historically run a café/restaurant business from the ground floor, whilst residing in the flat above. The business, known as Island Café, closed in 1996 and the premises remained unoccupied thereafter. They subsequently fell into disrepair and, in the light of their prominent position in the town centre and the council's failure to persuade the claimant to effect the required repairs, the council made the CPO, under section 226(1)(b) of the Town and Country Planning Act 1990 on 7 April 2006. It was confirmed by the Secretary of State on 8 March 2007, a General Vesting Declaration was made on 8 August 2007 and the freehold vested in the council on 12 September 2007, which is the date of valuation for the purposes of this reference. As a result of being unable to agree compensation with the claimant, Notice of Reference to this Tribunal was lodged by the council on 14 August 2008.

3. Mr Robert Walton of counsel appeared for the acquiring authority and called Mr Anthony Martin Chase FRICS of Gerald Eve, Chartered Surveyors of London WC1, who gave expert valuation evidence. The claimant did not appear.

Facts

4. From the evidence, and from the trial bundle that had been prepared by the council (a copy of which had been provided to the claimant), I find the following facts. The subject premises are located on a corner site at the junction of Guild Street, Windsor Street, Henley Street and Shakespeare Street to the northwest of Stratford Town Centre and in close proximity to major tourist attractions such as the Shakespeare Trust, and Shakespeare's Birthplace. They comprise a ground floor shop of predominantly open plan design with a curved return frontage onto Windsor Street and Guild Street. At the valuation date, the premises contained, on the ground floor, 83.1 sq m of sales and seating area with bar, storage and a kitchen. On the first floor, accessed from within the shop area, was a two bedroom flat of 77.65 sq m.

5. Over the years following the closure of the claimant's parents' former business, and their subsequent vacation of the property, the council became increasingly concerned that the condition of the building was deteriorating to such an extent that the adjoining area was being adversely affected. A Notice under section 215 of the Town and Country Planning Act 1990 was served upon the claimant 8 June 2004, requiring him to remedy defects to the exterior of

the property. The notice was not complied with and the claimant was prosecuted. The council then elected, in 2006, to make the CPO. In its statement of reasons it said:

“The land is not required as part of a larger scheme of development or improvement but rather to address the detrimental effects arising from the poor condition of the property and the fact that it has not been in commercial use since 1990 (*sic*). This has had an adverse affect on the environment of nearby commercial properties and areas of interest to visitors. The land occupies a particularly prominent location within the town of Stratford-on-Avon, astride a major route into the town and in close proximity to major tourist attractions such as Shakespeare’s Birthplace and associated properties in Henley Street.”

A Public Inquiry into the CPO commenced on 17 October 2006 but was adjourned to “allow progress to be made in the expectation that compulsory purchase could be avoided.” A negotiated solution was not found, and the Inquiry recommenced and was heard on 11 January 2007.

6. In her report to the Secretary of State, recommending confirmation of the CPO without modification, the Inspector noted that the purposes of the CPO were to secure the proper planning of the area by means of restoring the currently unused property to a use “in keeping with the character of that part of the town.” She said, at paragraph 8:

“8. The council seeks removal of the eyesore at a gateway location in a strategically important centre for tourism. Acquisition would allow the property to be repaired and sold on, or be sold subject to repair being carried out... Renovation of the premises would contribute to the social and economic well being of the area...

9. The evidence supports the council’s view that the objector [Mr Jedynek] is unable to bring about the necessary improvements. Compulsory purchase is the only way to achieve that objective. The owner would be compensated for the loss of the building. There is a compelling case in the public interest.”

Noting the objections, she said:

“18. ...the objector has been aware of the problem for more than 4 years, has been pursuing potential shop front contractors for at least two years, and has had the benefit of a letting agent since August last year. Indeed, the Inquiry was adjourned last October to allow time for the expressions of interest [from potential lessees] to proceed to contract. This has not happened. Despite the exhaustive efforts of the council, the objector has been either unwilling or unable to commit to a solution.”

And at para 22, she said:

“22. At the Inquiry, the council undertook, in the event that the Order is confirmed, to not proceed with the acquisition of the property if the objector has, in the meantime, let the property or a contract for repair works. Compulsory purchase should be seen as a last resort. The council’s undertaking would avoid the need for the acquisition should a preferable alternative come about in a reasonable time.”

The inspector's recommendation was accepted by the Secretary of State, and the Order was confirmed without modification on 8 March 2007, the GVD was made on 8 August 2007, and the council took possession on 12 September 2007.

The evidence

7. Mr Chase is a partner, and Head of Compensation at Gerald Eve LLP. He has over 25 years experience in the valuation of commercial and other property, and has specialised in matters relating to compulsory purchase and compensation. He is a member, and past chairman, of the Royal Institution of Chartered Surveyors' Compulsory Purchase and Compensation and Policy Panel, and a member of the Compulsory Purchase Association. He said that he had been instructed by the council in February 2008 to advise on the compensation payable in this case, but prior to that, in May 2007, a colleague from Gerald Eve's Birmingham office had undertaken a valuation of the freehold interest, on the instruction of the acquiring authority. That valuation had been accompanied by a preliminary repair costs budget, prepared by one of his firm's building surveyors (from a limited external inspection and photographs of parts of the interior provided by the council) which assessed the likely cost of essential works to be in the region of £108,000 net of VAT. That figure, Mr Chase said, compared with an approximation that had been provided by the claimant's previously appointed letting agent of £80,000 to £100,000. The valuation, as at May 2007 and taking account of the estimated repair costs, was £380,000.

8. In August 2007, just prior to the vesting date, Mr Chase said that his firm was instructed to market the property for sale to a purchaser able and willing to undertake the necessary repairs, and bring the property back into use. The property was to be offered on the basis of a building lease for a term of one year (outside the security of tenure provisions contained in Part II of the Landlord and Tenant Act 1954) obliging the tenant to undertake, to the council's satisfaction, all the repairs listed in the Schedule. Upon satisfactory completion of the repairs, the freehold title would be transferred for a nominal £1. Particulars and advertisements were prepared, and the property was initially offered to the market by private treaty. No reference was made to the condition of the property, other than a statement in the particulars regarding the need to take care during any inspection. Interest in the property was such that, on the agent's recommendation, the council decided that offers should be invited on an informal tender basis. A tender pack was sent to interested parties on 17 January 2008 containing proposed heads of terms, a schedule of works required and a summary of the estimated repair costs.

9. In all there were 27 viewings of the property, all of which were accompanied by a representative of Gerald Eve. The majority of prospective purchasers were also accompanied by builders who, Mr Chase said, were warned of the condition by a notice displayed on the premises. Six tender offers were received on 1 February 2008, the highest being from Beautiful Losers Group Ltd (BLG) in the sum of £550,000. On the basis that, not only was that bid £150,000 higher than the next highest bid, but also the prospective purchaser was able to positively comply with all the stipulated conditions of purchase, the offer was accepted and the sale completed on 4 April 2008. The required works were subsequently undertaken ahead

of schedule, and the freehold was transferred in accordance with the terms of agreement, on 28 September 2008.

10. Mr Chase said that as any compensation for the acquisition of the freehold interest in land, under section 5(2) of the LCA 1961, was to be the amount which a property might be expected to realise if sold in open market by a willing seller, the price achieved by the council only 4 months after the valuation date was the best evidence of value, and £550,000 was, therefore, the value he adopted. He had checked the relevant indices of price movements for both commercial and residential property between September 2007 and February 2008, and concluded that, in the light of only very marginal increases being shown in each sector, no downwards adjustment to reflect the September 2007 value was necessary.

11. It was not necessary or appropriate, in his view, to seek evidence of comparable transactions in the vicinity as the actual transaction that had occurred was the best and most reliable indicator. This view was supported in *Meghnani v London Borough of Hackney* (2008) LT ref: ACQ/25/2006 (Unreported), a case where the circumstances were broadly similar, and the Tribunal (Mr N J Rose FRICS), concluded that the most reliable starting point was the price obtained by the acquiring authority. Although that sale was 8 months after the date of acquisition, and adjustments also had to be made for factors relating to an incorrect and misleading description of the state of the property, causing bidders to overestimate the likely cost of repairs, the principle was, Mr Chase said, the same.

12. He said that the subject property was properly and effectively marketed (as apparent from the level of interest), there had in his opinion been no adverse effect on the level of offers caused by the contractual obligation to put the premises into repair and it had, in fact, been sold at a price that substantially exceeded Gerald Eve's expectations. The 2nd to 4th underbids ranged between £400,000 and £350,000 which were more in line with the agent's initial assessment. In all the circumstances, therefore, he felt that the compensation of £550,000 that had been offered to Mr Jedynak by letter of 13 June 2008 incontrovertibly represented the open market value at the date of valuation.

13. As to the fact that, in a letter to the claimant dated 22 July 2009, reaffirming the council's offer of compensation, he had also indicated that a basic loss payment under section 33A of the Land Compensation Act 1973 of 7.5% of the purchase price (£41,250) would be made, Mr Chase said that he had not at that time known of the notice that had been served upon Mr Jedynak under section 215 of the Town and Country Planning Act 1990. As soon as he had become aware of it, he said he wrote to the claimant advising that he was not entitled to such a payment, and that it would not be made. The compensation would, therefore, amount solely to the £550,000 offered (open until the commencement of the hearing), together with statutory interest from 12 September 2007, less any advance payment already made.

Conclusions

14. I am entirely satisfied with Mr Chase's report and his conclusions. The claimant offered no evidence to the contrary, and I can see no reason why the determination should not be in the sum offered. Indeed, it seems to me that whatever the claimant's views and opinions may have been in relation to the need for, or the validity of, the CPO, the price achieved on sale appears particularly good. Although I note that the valuation undertaken by Gerald Eve was effective as at May 2007, rather than September (the valuation date), meaning that at the date of tender, nine months rather than four had passed, the price achieved was still some 37% higher than the agent's assessment. It was also £150,000 more than the next bid, which indicates that the agent's advice to the council, in its attempts to achieve the best possible price, was soundly based and most appropriate.

15. As to the basic loss payment that had been offered, section 33A of the 1973 Act provides:

- “33A – (1) This section applies to a person-
- (a) if he has a qualifying interest in land,
 - (b) if the interest is acquired compulsorily, and
 - (c) to the extent that he is not entitled to a home loss payment in respect of any part of the interest
- (2) A person to whom this section applies is entitled to payment of whichever is the lower of the following amounts-
- (a) 7.5% of the value of his interest;
 - (b) £75,000”

However, section 33D, where relevant, provides:

- 33D – (1) This section applies to a person if-
- (a) he is a person to whom section 33A, 33B or 33C applies,
 - (b) a notice falling within subsection (4) has been served on him in relation to the land mentioned in that section,
 - (c) at the relevant time the notice has effect or is operative, and
 - (d) he has failed to comply with any requirement of the notice
- (4) These are the notices-
- (a) notice under section 215 of the Town and Country Planning Act 1990 (power to require proper maintenance of land);

...

16. Notice under section 215 had been served upon the claimant, he was prosecuted under it and had been fined. It is clear therefore that the claimant is excluded from entitlement to the basic loss payment under the above provisions, and I am satisfied that, although it was unfortunate that the offer was made in the first place, Mr Chase took steps to correct the situation in correspondence with the claimant in a timely and appropriate fashion.

17. I determine the compensation in respect of the compulsory acquisition of the subject premises in the sum of £550,000. Interest on the compensation is payable from the date of entry, 12 September 2007.

18. This decision will take effect when the question of costs is decided, and not before. The parties are now invited to make submissions on costs in writing, and a letter accompanying this decision gives details for the procedure to be followed.

DATED 19 February 2010

P R Francis FRICS