

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**



**Neutral Citation Number: [2019] UKUT 316 (LC)  
Case No: LCA/73/2017**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*COMPENSATION – LAND COMPENSATION ACT 1973 Part 1 - Guesthouse and dwelling house adjoining railway line – public works involving reopening of station – increase of train movements from 4 to 14 per day – lack of evidence on the statutory basis – claim dismissed*

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

**BETWEEN:**

**DENHAM AND MICHELE GREGORY**

**Claimants**

**- and -**

**NETWORK RAIL INFRASTRUCTURE LTD**

**Responsible  
Authority**

**Re: “The Ferryboat Inn” and “Banc-Yr-Afon” Cottage  
Goodwick  
Fishguard  
Pembrokeshire  
SA64 0AE**

**Peter D McCrea FRICS**

## DETERMINATION ON WRITTEN REPRESENTATIONS

### DECISION

#### Introduction

1. One of the many casualties of cuts to the national railway network was the railway station of Fishguard and Goodwick in Pembrokeshire, which closed in April 1964. It stood alongside a single-track section of the line from Carmarthen to Fishguard Harbour, and remained closed for nearly 50 years, although the line remained active. Following the publication of a consultant's report which recommended increased rail traffic in the area to stimulate the local economy, in Spring 2011 the Welsh Assembly announced that it would fund additional rail services for an initial three-year trial period. As a result, the daily number of trains on the line to Fishguard Harbour would increase from four to fourteen, facilitated by works to the line and at Fishguard and Goodwick Station carried out by Network Rail Infrastructure Ltd ("Network Rail"), the responsible authority in this reference. The works which gave rise to the claim comprised the slewing and lowering of the railway track, works to the platform wall and copers, resurfacing the platform and a new waiting shelter. The increased number of trains started on 12 September 2011.

2. In addition, but falling outside this reference, Pembrokeshire County Council acquired and carried out works to the disused railway station including refurbishment of the car park, lighting and the redevelopment of the station buildings. The station re-opened on 14 May 2012.

3. Approximately 500 metres down the line, southwest of the Fishguard and Goodwick Station, stands the Ferryboat Inn, and an adjoining house, "Banc-Yr-Afron", which share a surfaced car park to the front (together "the reference property"). An elevated section of the single-track railway line, approximately level with the first floor, adjoins the rear of the reference property about 5 metres from the house, and between 10 and 15 metres from the Inn.

4. The claimants in this reference, Mr Denham Gregory and Mrs Michelle Gregory, owned the reference property between April 2005 and March 2018. They have had legal assistance from a number of parties but largely represented themselves, relying on expert evidence from Mr Jeremy Tobin MRICS, an Associate Director of Pinders. Network Rail were represented throughout by Eversheds Sutherland International LLP, with expert evidence being provided by Mr Simon Mole MRICS, a Partner and Head of CPO at Carter Jonas.

5. The claim is brought under section 9 of the Land Compensation Act 1973 ("the Act") which gives a right to compensation where the value of an interest in land had been depreciated by physical factors caused by the use of certain public works. The physical factors relied upon

by the claimants are noise and vibration caused by the increase in use of the railway line immediately behind the reference property. The measure of compensation is the depreciation in the value of the reference property caused by those factors.

6. The reference was originally set down for hearing under the Tribunal's standard procedure but following a case management hearing, and with the parties' agreement, I directed that the reference would be determined on the basis of written representations.

### **The facts in outline**

7. From the evidence I find the following facts.

8. The reference property lies in the town of Goodwick, some 1.5 km northwest of Fishguard, on the Pembrokeshire coast. Further to the northwest, at Fishguard harbour, there is a regular ferry service to the Republic of Ireland.

9. The reference property is on the northern side of Manor Way (A487), one of the principal arterial routes to the town. It is set back from the road by a surfaced car park, and comprises a long linear building, split into two. The larger left-hand portion comprises the Ferryboat Inn, while "Banc-Yr-Afon" provides separate three-bedroomed living accommodation in the smaller right-hand end.

10. The claimants purchased the reference property in April 2005 for £310,000, when it traded as a restaurant and take-away fish and chip shop, with five letting bedrooms. Between December 2005 and April 2006, the business was closed for the refurbishment of the letting bedrooms, refitting of the kitchen and the installation of external decked seating areas. The take-away element was closed. Between January and April 2007, the restaurant, bar and residents' lounge were refurbished. In January 2008, once the claimants learnt of the recommendation to increase the number of trains, they put the business up for sale but following a period in which there was little interest they took it off the market. In September 2008, following the collapse of Lehman Brothers and the general economic crash, the business suffered a fall in restaurant bookings. Between 2009 and 2011, the restaurant continued on reduced opening hours.

11. In March 2011, it was announced that the Welsh Assembly would subsidise an increase in train frequency from four to fourteen trains a day, Monday to Saturday, from 12 September 2011 for an initial three-year period. In April 2012, the claimants closed the restaurant business and reconfigured the ground floor to create two additional letting rooms, and the Ferryboat traded as a seven-bedroom guesthouse from June 2012.

12. On 14 May 2012, the new railway station opened to passengers.

13. In June 2015, the claimants put the property back on the market, and after a series of price reductions, they sold it in March 2018 at £357,000.

### **Statutory provisions**

14. Section 1(1) of the Act confers the right to compensation for depreciation in the value of qualifying interests in land by physical factors caused by the use of “public works”. The physical factors referred to are listed in subsection 2 and include noise and vibration. There is no dispute in this reference that the claimants held a qualifying interest. The non-residential element of the reference property did not exceed the prescribed amount under section 2(3)(b)(i) of the Act, since its rateable value of £4,000 at the relevant date was comfortably below the ceiling of £34,800 prescribed by the Town and Country Planning (Blight Provisions) (Wales) Order 2011.

15. Since this reference concerns alterations to existing public works, section 1(9) defines the relevant date as the date on which they were first used after completion.

16. Section 3 concerns the making of claims. Subsection (2) prevents a claim from being made earlier than the day following the first anniversary of the relevant date, referred to as “the first claim day”.

17. Section 4 provides general provisions concerning the assessment of compensation. By subsection 1, the compensation is assessed by reference to prices current on the first claim day. In assessing depreciation, subsection 2 limits the claim to the effect of the use of the public works in the state in which they are on the first claim day, together with any intensification of that use that might reasonably be expected of the works in the state in which they are on that date.

18. Subsection 4(4) provides that the value of the claimant’s interest shall be assessed by reference to the nature of the interest and the condition of the land as it subsisted on the date of service of notice of the claim; and in accordance with rules (2) to (4) of the rules set out in section 5 of the Land Compensation Act 1961. Only Rule 2 is relevant to this reference, which states that:

“The value of land shall, subject to as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise...”

19. Subsection 4(5) imposes further qualifications on the valuation exercise. The valuer is required to leave out of account any part of the value of the interest which is attributable to any building, or improvement or extension of a building, on the land if the building or, as the case

may be, the building as improved or extended, was first occupied after the relevant date; and any change in the use of the land made after that date.

20. Under section 6, any compensation shall be reduced by an amount equal to an increase in the value of the claimant's interest in the land in respect of which the claim was made which is attributable to the existence of or the use of the public works.

### **The valuation framework**

21. It is convenient to first consider how the statutory provisions apply to the facts in this case, and how the three important dates underpin the valuation framework. First, the "relevant date", which the claimants' statement of case assumed to be 14 May 2012 – the date when the station re-opened. I do not think that is right. The public works which give rise to this reference are not those which resulted in the station re-opening, they are the works to the track outlined in paragraph 1. Those works were first used on 12 September 2011 when the number of trains increased. In my view that is the relevant date. As I explain below when I discuss Mr Tobin's evidence, there may have been some doubt as to which date applied, but in the end, nothing turns on this.

22. The second important date is the "first claim day", defined in section 3(2) as twelve months plus one day after the relevant date. On the facts I have found, the first claim day is therefore 13 September 2012, not 15 May 2013. The assessment of diminution in value is required to be by reference to "prices current" at that date.

23. The third is the date of service of notice of the claim under section 4(4)(a). In correspondence, solicitors for Network Rail confirmed that it had not received notice of the claim before the reference to the Tribunal, which is not disputed by the claimants, and accordingly I have taken the date of service of notice of the claim to be the date of the reference – 27 October 2017. This date is relevant because the assessment of diminution is required to assume the "condition" of the property as it was at that date.

24. In this reference the relevant date of 12 September 2011 preceded the programme of conversion works from a restaurant with five letting bedrooms to a seven-bedroomed guest house, which took place between April and June 2012. Even if 15 May 2013, the date suggested in the statement of case, was taken to be correct, the relevant date would have fallen in the middle of the programme of works.

### **The claimants' evidence**

25. Mr and Mrs Denham each provided very similar witness statements, amounting to 244 paragraphs plus 71 exhibits. I should say straight away that their witness evidence was credible. I have considerable sympathy for them and can readily understand their frustration at

the turn of events. Their account of laypeople grappling with the complexities of a dispute involving many statutory bodies was a familiar one. However, I can only deal with the reference as it was made under the Act, and I mean the claimants no discourtesy in finding that a significant amount of their evidence, whilst understandable and obviously heartfelt, was irrelevant to their claim.

26. The claimants confirmed that as part of their pre-purchase due diligence, they stayed the night at the Ferryboat, to see if they were disturbed by the noise of the train travelling to and from Fishguard Harbour. They were not woken by the train which passed at 1.30am. They did detect noise and vibration from the train which passed at 1.30pm, but considered this acceptable as it was a short return journey. The timetable at that point, arriving and departing from Fishguard, was 0129 arriving, 0150 departing; and 1325 arriving, 1350 departing. Mr and Mrs Gregory outlined six of the extra services that began in September 2011, giving ten in total, but it is common ground that the total number of trains increased to 14.

27. In November 2008 and continuing annually thereafter, Network Rail began a regime of clearing the track of leaves by a special maintenance train. This was first experienced by the claimants at 5am one morning, causing significant vibration. The claimants say that, year on year, the frequency of the leaf clearing increased during each Autumn, culminating in five nights a week for eight weeks in Autumn 2017. There was an increase in their personal stress levels, and a series of extremely unfortunate events, including a personal tragedy. Mr and Mrs Gregory say that the increase caused significant sleep deprivation, allowing only six hours a night, such that they were unable to properly operate their business.

### **The expert evidence**

28. Mr Jeremy Tobin MRICS was instructed by the claimants' former solicitors to provide an opinion of market value of the freehold property and business as a fully operational going concern on two dates, 13 September 2012 and 15 May 2013, and in each case on two bases: first, assuming that there had been no intensification in the use of the railway line; and secondly having regard to the actual levels of use of the railway line. His instructions were to provide an opinion of value assuming no rail works had been implemented, "allowing the claimants to develop their restaurant and associated five letting rooms".

29. Mr Tobin did not explain the relevance of the two dates, nor did he enclose a copy of his instructions. But the fact that he was asked to value the property as at both 13 September 2012 and 15 May 2013, suggests that there may have been some doubt from the claimants' side as to the relevant date.

30. It is common in references under Part 1 of the Act for a comparison to be made between the operations emanating from the public works on a "switched on" and "switched off" basis, the latter representing a scenario whereby the public works have been carried out, but are not being used. I shall adopt that shorthand here. Mr Tobin's valuation methodology began by adjusting the claimants' business accounts by adding back expenditure that was personal to

them. He then applied a years' purchase multiplier to the resulting adjusted net income. It is not necessary for me to outline his valuations in any detail, but they amounted to the following:

Date	Switched off value	Switched on value
13 September 2012	£420,000	£335,000
15 May 2013	£435,000	£340,000

31. The claimants' statement of case adopted Mr Tobin's valuations as at 15 May 2013 in support of the claim of £95,000. I note that if the first claim day was 12 September, the claim would be £85,000.

32. Mr Tobin confirmed that turnover peaked in 2008/09 at £140,000 including VAT but fell significantly owing to the general economic climate. The restaurant was trading on reduced opening hours between 2009 and 2011. Turnover fell to £90,383 in 2009/10, and fell further to £75,297 in 2010/11, during which period the business was de-registered for VAT, in July 2010.

33. All of this occurred before the increase in trains began, in September 2011. The restaurant was closed in April 2012, and the property traded as a 7-bedroomed guest house from June 2012. The first claim day is 13 September 2012.

34. The turnover figures for the following three years were:

Year ending 31/3	2012	£73,323
	2013	£74,460
	2014	£76,819

35. The difficulty with Mr Tobin's approach is that it is entirely speculative: he has "assessed the trade based upon the business model that Mr and Mrs Gregory suggest that they would have implemented had the use in the railway line not intensified". His switched off figures are based on a projected increase in annual operating profit of around £26,000, assuming "that the owners had extended the business premises and continued to operate the business premises and continued to operate the restaurant plus five letting rooms". The expansion he refers to would have comprised converting the residents' lounge into a new bar, with the existing bar being converted into a new toilet block. The kitchen would be improved, and there would be a small conservatory to effectively enclose the external seating.

36. However, that approach is not permitted under the statutory scheme – any increase in value attributable to improvements or extensions after the relevant date are to be left out of account, certainly for any element first occupied after that date. Putting that to one side, there are other difficulties with Mr Tobin's approach. It disregards the cost of the conversion work – estimated to be £60,000 – assuming instead that it would be met partly from grant aid from the

Council's local investment fund, and Mr Gregory's belief that additional funding from the Tourist Investment Support Scheme "may" also have been available. There was no evidence in support of that assertion.

37. Mr Tobin very fairly accepted in his rebuttal report that his report did not seek to provide a valuation in relation to the Act, and neither he nor his firm profess to be experts in compensation matters. However, I have considered whether any of the evidence or trading data which he has produced supports a claim on the statutory basis.

38. As regards the business, I note that the turnover remained virtually static for the four-year period either side of the first claim day. As regards the cottage, even Mr Tobin valued this, switched off and switched on, at £125,000.

39. It is not necessary for me to outline Mr Mole's evidence in detail, as it was largely a rebuttal report dealing with many of the points which I have outlined above.

40. However, there is some force in Mr Mole's view that, in fact, the railway station re-opening would have had a beneficial impact on the value of the reference property, providing the opportunity to open up the local market to increased tourism and well as the ferry trade to Ireland. Mr Mole accepts that there would have been a detrimental impact on the reference property as a result of increased train movements, but considered that this is countered by the re-opening of the station. In his opinion, the net effect of the diminution value of the reference property is zero. I accept his evidence and agree with it.

## **Conclusion**

41. Whilst I have no doubt that the claimants were personally affected by the increased number of trains passing the reference property, there is no credible evidence that there was a diminution in value of their interest in the reference property itself. Mr Tobin's evidence purported to value an opportunity cost that was wasted as a result of the physical factors from the works. But that isn't how the statute works, and there was no evidence to support the claim on any other basis. It follows from the above that, sadly for the claimants, the claim must be dismissed.

42. The reference was determined under the Tribunal's written representations procedure under which costs are only awarded in exceptional circumstances. There are no such circumstances and I therefore make no award for costs.

Dated: 18 October 2019





Peter D McCrea FRICS

