



The following case is referred to in this decision:

*Pramar v The London Borough of Barnet* [2015] UKUT 510 (LC)

## **Introduction**

1. This is a decision to determine the amount of compensation to be paid by Burnley Borough Council (“the acquiring authority”) to Pepper (UK) Limited (“the claimant”) in part satisfaction of an outstanding loan secured on 42 Thorn Street, Burnley BB10 1NB (“the property”) following compulsory acquisition of the long leasehold interest in the property by General Vesting Declaration.
2. Miss Catherine Beech (“the interested party”) has been the proprietor of the property under a long leasehold interest since 29 March 2007. The price paid was £50,000 and a charge was registered in the name of Oakwood Homeloans Limited whose loan was secured against the property. The claimant has been the registered proprietor of the charge since 2 February 2015.
3. On 9 May 2016 the acquiring authority acquired title to the property from the interested party by way of a General Vesting Declaration made on 6 April 2016 under The Burnley (42 Thorn Street Burnley) Compulsory Purchase Order 2015 (“the compulsory purchase order”) under section 17 of the Housing Act 1985.
4. Compensation offered to the interested party for the value of the property at the date of acquisition was less than the principal, interest and costs secured on it by the charge.
5. Negotiations between the acquiring authority and the interested party concerning compensation broke down when the interested party failed to respond to the acquiring authority’s letter of 12 June 2019.
6. On 12 May 2020 the claimant made a reference to the Tribunal under section 15(1) of the Compulsory Purchase Act 1965 (“the Act”) for the determination of compensation to be paid for the acquisition of the property. The compensation will be payable directly to the claimant in respect of the release of the charge and in part satisfaction of the interested party’s secured liabilities under the loan.

## **Statutory background**

7. Section 15 of the Act 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.

...”

## **Facts**

8. Margaret Rutherford MRICS is a principal development surveyor at the acquiring authority who inspected the property on 4 August 2015 and 9 May 2016. She has provided an expert report, dated 6 August 2019, from which I find the following facts concerning the nature and condition of the property. I have also made reference to both parties' statements of case and copies of correspondence supplied with them.
9. The property is located in a residential area of Danehouse, Burnley, close to the main arterial/bus route linking Burnley and Nelson. It was, at the date of vesting, a two-bed end of terrace house which opened directly on to Thorn Street with a yard to the rear. The property was constructed around 1880 of gritstone walls under a blue slate pitched roof, typical of houses in the area. Some of those houses were cleared 10 – 15 years ago under the Housing Market Renewal Programme and the property adjoined a large clearance site which was grassed pending redevelopment.
10. The property was held by the interested party under a long leasehold interest for a term of 999 years from 12 March 1880. No details are available of a ground rent or any other conditions of that lease.
11. The site area of the property was 59 square metres and the gross external area of the house was 81.5 square metres over two floors. The ground floor comprised a hall, front and rear rooms with no kitchen extension. The first floor comprised front and rear rooms and a bathroom with a toilet only.
12. At the date of internal inspection in August 2015 the property was vacant, in a poor state of repair and unusable without substantial refurbishment. In particular it had no back door or glazing to the rear window, allowing access to pigeons and also vandals. Copper pipework had been removed and floorboards were missing. There was evidence of woodworm in some of the remaining timber. It remained in this condition at the date of valuation.
13. The compulsory purchase order was made in 2015 (no date has been provided) on the grounds that:
  - (1) The property was in a very poor state of repair and was deteriorating;
  - (2) It had been vacant since November 2016;
  - (3) The interested party had no funds to renovate the property to bring it back into use;
  - (4) The interested party had made no attempts to sell the property on the open market so that someone else could renovate it and bring it back into use;

- (5) The property was having a detrimental effect on neighbouring properties and local residents.
14. A General Vesting Declaration was made on 6 April 2016 and title was vested in the acquiring authority on 9 May 2016.
  15. The property and the adjoining property 40 Thorn Street were sold to Calico Homes Limited by private treaty on 11 June 2018 for a total price of £38,000.
  16. On 3 July 2018 the interested party sent a letter to the acquiring authority authorising Mark Dawson of Owl Estates Limited to act on her behalf. Mrs Rutherford wrote to Mr Dawson on 30 July 2018 offering compensation in the sum of £18,000 plus a basic loss payment of 7.5% and reasonable fees. He responded on 3 September 2018 declining the offer due to the amount said to be outstanding on the mortgage secured against the property. Mrs Rutherford replied the same day explaining the basis for compensation and suggesting that the interested party might wish to appoint a chartered surveyor to act for her in negotiation and settlement of the compensation. She sent a further email on 28 September but heard nothing more from Mr Dawson.
  17. On 3 June 2019 the interested party wrote to Mrs Rutherford declining the offer of £18,000 and proposing a settlement figure of £25,000 based on her own sales of seven similar properties that year for figures in the region of £25,000. Mrs Rutherford responded on 4 June 2019 explaining that sales in 2019 were not appropriate as evidence for a valuation date of May 2016, but increasing the offer of compensation to £20,000 plus 7.5% basic loss payment and reasonable fees. She invited the interested party to provide evidence for her higher figure.
  18. The interested party replied on 10 June 2019 giving the addresses of the properties she had recently sold. Mrs Rutherford wrote back on 12 June 2019 commenting that the sales referred to, which were all in Burnley Wood, must have been recent as they were not reported on the websites of Zoopla, Rightmove or the Land Registry and were not therefore relevant to the valuation date of May 2016. Mrs Rutherford referred to evidence of three sales upon which she relied for her own valuation and recommended that the interested party might wish to appoint a chartered surveyor to act for her. Nothing further has been heard from the interested party.

### **Evidence for the claimant**

19. In its statement of case the claimant explained its interest in the property and confirmed that it had received no copies of acquisition documents.
20. The claimant's solicitor wrote to Mrs Rutherford at the acquiring authority on 21 August 2018 enquiring about compensation. Mrs Rutherford replied on 22 August confirming her offer to the interested party of £18,000 and attaching her inspection notes with valuation.

21. The claimant's solicitor did not receive any communication from the interested party in response to letters sent to her care of her agent Mr Dawson on 5 November 2018 and to her directly on 20 December 2018. Telephone conversations took place with Mr Dawson, who was not instructed to agree the compensation on her behalf.
22. A trace agent was instructed in November 2019 to locate the interested party and a field agent visited the trace address in December 2019 but was unable to make contact.
23. On 28 February 2020 the claimant was informed by Mrs Rutherford for the acquiring authority of the increased offer of £20,000 made to the interested party on 4 June 2019 and declined on 10 June 2019.
24. Copies of the correspondence referred to above has been supplied to me.
25. The claimant does not dispute that the compensation payable is in the order of £20,000.

### **Valuation evidence**

26. In her expert report Mrs Rutherford confirmed that she was instructed by the acquiring authority to inspect the property in August 2015 in order to provide an estimate of the property's market value and to commence negotiations to acquire the property. She re-inspected the property externally on 9 May 2016, the date of vesting, to confirm whether there were any apparent changes which might have an effect on value.
27. The approach Mrs Rutherford took to valuing the property for compensation was based on comparable evidence of sales in Thorn Street and nearby. Evidence close to the valuation date in May 2016 was limited, with no sales in Thorn Street since 2012.
28. 29 Thorn Street, in need of full refurbishment, sold for £20,000 at auction in May 2012. 35 Thorn Street sold for £30,000 in September 2012 with central heating and double glazing and in a lettable condition.
29. In March 2016 nearby 43 Milner Street sold for £15,750. This property required full refurbishment but was mid-terrace rather than end of terrace.
30. In June 2018 neighbouring 40 Thorn Street was sold together with the property in its un-refurbished state to a local housing association Calico Homes Limited. The total price of £38,000 was apportioned £18,000 to 40 Thorn Street and £20,000 to the property.
31. Taking account of the available evidence Mrs Rutherford's opinion was that the value of the interested party's leasehold interest in the property at 9 May 2016 was £20,000.

## Decision

32. I am satisfied from the evidence of correspondence between the acquiring authority and the interested party that she has chosen not to engage further in the negotiation of compensation.
33. I am satisfied that the claimant has made a valid reference under section 15(1) of the Act and that under section 15(2) of the Act the compensation I determine should be paid to it in part satisfaction of the interested party's mortgage debt secured against the property.
34. In consideration of the valuation evidence, and the statement by the claimant that it does not dispute the amount of compensation proposed by the authority's expert, I determine that the compensation shall be £20,000 plus statutory interest from the date of valuation.
35. I have not received submissions regarding entitlement to a basic loss payment under section 33A of the Land Compensation Act 1973 ("the 1973 Act") at 7.5% of the value of the interest. I note that in its letter to the interested party of 4 June 2019 the acquiring authority made an offer of £20,000 in compensation for the value the property and in addition a basic loss payment at 7.5% of that amount. It was explained in *Pramar v The London Borough of Barnet* [2015] UKUT 0510 (LC) at paragraph [46] that under section 33E of the 1973 Act a claim for a basic loss payment must be made in writing to the acquiring authority.
36. No claim for a basic loss payment has been made so I can make no award of one. It remains open for the interested party to make such a claim.
37. This decision is final on all matters save costs. A letter on costs accompanies this decision.

Mrs Diane Martin MRICS FAAV

Dated: 27 October 2020