

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2021] UKUT 188 (LC)  
UTLC Case Numbers: LC-2021-202**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*COMPENSATION – COMPULSORY PURCHASE – reference struck out as having no reasonable prospect of succeeding*

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

**BETWEEN:**

**R GARDNER & COMPANY (LANCASTER) LIMITED**

**Appellant**

**-and-**

**LANCASTER CITY COUNCIL**

**Respondent**

**Re: St Georges Works  
St Georges Quay  
Lancaster**

**Martin Rodger QC, Deputy Chamber President**

**30 July 2021**

**Royal Courts of Justice**

Mr Stephen Loxam represented the claimant

The respondent had not been served with the proceedings and was not represented

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The following cases are referred to in this decision:

*Thomas Newall Ltd v Lancaster City Council* [2015] UKUT 239 (LC)

*Thomas Newall Ltd v Lancaster City Council* [2016] EWCA Civ 31

*R Gardner & Company Ltd v Lancaster City Council* [2020] UKUT 327 (LC)

1. This is the corrected transcript of a decision delivered orally at the hearing on 30 July 2021.
2. The reference before the Tribunal this morning has been brought by R Gardner & Company (Lancaster) Ltd and names Lancaster City Council as the respondent. For reasons which will become apparent I directed that the reference should not be served on the intended respondent until after the Tribunal had considered whether it ought instead to be struck out as having no reasonable prospect of succeeding. The hearing has been arranged to enable the claimant's representative, Mr Stephen Loxam, to address the Tribunal on that issue.
3. Although this is nominally a new reference filed in April this year, it is closely related to a much earlier reference commenced in the Lands Tribunal as long ago as 2008. The claimant was not a party to that reference, which was a claim for compensation brought by its subsidiary, Thomas Newall Ltd ("TNL") against Lancaster City Council arising out of the compulsory acquisition of the St George's Works, St George's Quay, Lancaster under the Lancaster City Council (Luneside East Lancaster) Compulsory Purchase Order 2005.
4. The current reference invites the Tribunal to review and set aside a decision made on preliminary issues in the original reference by HHJ Alice Robinson and Mr Norman Rose FRICS on 29 March 2010. If the Tribunal is not prepared to set the previous decision aside the claimant asks alternatively that I grant permission to appeal to the Court of Appeal.
5. This is not the first attempt by Mr Loxam to re-open the Tribunal's determination of TNL's claim for compensation. That claim ended disastrously: after three substantial hearings and an unsuccessful trip to the Court of Appeal just enough was shaved off the sum awarded to TNL by the Tribunal that it failed to beat the acquiring authority's sealed offer and found itself liable for the bulk of the costs of the reference.
6. The hearing this morning has been attended on behalf of the claimant by Mr Loxam, who has been involved throughout the various proceedings. He was formerly the managing director of TNL and he feels very strongly that the Tribunal's original decision in TNL's reference was procured as a result of dishonest statements made by the Council and its witnesses, including its expert valuation witness, Mr Massey, who was criticised by the Tribunal for his lack of candour.
7. In 2015 I dismissed TNL's application to admit new evidence and to set aside the Tribunal's original determination of the compensation payable for the St George's work (*Thomas Newall Ltd v Lancaster City Council* [2015] UKUT 239 (LC)). At that time Mr Loxam maintained that the material he wished to rely on demonstrated that Mr Massey had deliberately given false evidence. I dismissed that application and refused to reopen the 2010 proceedings. None of the *Ladd v Marshall* tests for the admission of fresh evidence were satisfied, and the application did not disclose special circumstances, such as fraud, which might have allowed the admission of new evidence free of those restrictions.
8. The early history of Mr Loxam's efforts to reopen the TNL reference is recorded in a decision of Briggs LJ given on 21 January 2016 (*Thomas Newall Ltd v Lancaster City Council* [2016] EWCA Civ 31) when he dismissed a renewed application for permission to

appeal to the Court of Appeal. It is not necessary to go over all of that material; it is available to be read.

9. Once all routes of appeal were closed to it TNL was forced into administration by the costs which it had to bear in the original reference. But in 2019 the administrators assigned all rights in relation to the compulsory acquisition of the St George's Works to TNL's parent company, R Gardner & Company Ltd, the claimant in this reference. The claimant's acquisition of those rights was intended to enable Mr Loxam to open new fronts in what Briggs LJ had called his "vigorous campaign designed to have the proceedings entirely reheard".
10. The claimant first commenced a new reference of its own seeking compensation for the acquisition of the St George's Works on the basis that, within ten years of the completion of the acquisition, an additional planning permission had been granted for the development of the land, which was said to give rise to a further claim for compensation under sections 23 to 25, Land Compensation Act 1961. I dismissed that reference on 23 November 2020 on the basis that the statutory conditions for a further assessment of compensation were not satisfied (*R Gardner & Company Ltd v Lancaster City Council* [2020] UKUT 327 (LC)).
11. In this new reference Mr Loxam returns to the Tribunal again seeking to re-open the original TNL reference on the grounds of fraud said to have been perpetrated by the Council, its staff and its advisers.
12. There are a number of immediate procedural difficulties with the new reference. Although they are closely related companies the claimant was not a party to TNL's reference and therefore has no standing to apply to set aside the Tribunal's original decision, whether by a new reference of its own or by an application in the original proceedings. That might be said to be a technical point and capable of being overcome if there was any substance in the new reference. When I put this to Mr Loxam he explained that all of the rights which had previously belonged to TNL had been assigned by its administrators to the claimant. I have not seen the deed of assignment and there is no application before the Tribunal to substitute the claimant in place of TNL in the original reference. But the claimant is without legal representation and at this stage I will focus on the substantive question of whether the relief it seeks might arguably be available to it, rather than on the procedure it has adopted.
13. Mr Loxam's previous efforts to set aside the Tribunal's 2010 determination focussed principally on the suggested dishonesty of Mr Massey, the expert witness who gave evidence on behalf of the Council. Having failed to have the decision set aside on that basis Mr Loxam now pivots to focus on matters which are said to have been known by the City Council itself and by its officers and to demonstrate that it presented a knowingly false case to the Tribunal. Mr Loxam tells me that the material on which he relies have again been procured through freedom of information requests addressed to the Council.
14. The issue for the Tribunal in the original reference was the value for compensation purposes of TNL's land on 10 November 2006, which was the statutory valuation date. The case advanced by TNL at the hearing of preliminary issues to determine what planning permission should be assumed to have been available on that date was that, assuming the

CPO scheme had been cancelled, the claimant would have secured planning permission to develop its own land by converting and extending the mill building and changing its use to provide approximately 150 flats.

15. It was relevant to that case for the Tribunal to determine what effect the grant of planning permission for TNL's self-contained scheme would have had on the achievement of a much larger development of the Luneside East area (which was an objective of planning policy). The Council's case, supported by the evidence of Mr Massey, was that any comprehensive scheme for the area would not have been viable if the claimant had been permitted to undertake a smaller development of its own land. The Council argued that the effect of piecemeal development would have been a material consideration in determining any application for planning permission by TNL and would have led to any such application being refused. TNL contended that its own proposals would have kick-started remediation and development of the area, and that it would have succeeded in obtaining planning permission for them.
16. The viability of the development proposals was therefore an issue in the original reference. That issue was part of the preliminary issue considered by the Tribunal in its 2010 decision. Its conclusion is recorded at [47] as follows:

“Taking into account all of the evidence we conclude that development of the remainder of Luneside East in accordance with the acquiring authority's preferred approach in SPG4 would have been unlikely to be viable. It follows that development of the reference land would not be a catalyst for regeneration of the rest of Luneside East.”
17. The material on which Mr Loxam now relies is said to demonstrate that quite contrary to the case which was put forward on the Council's behalf in 2010, its own comprehensive scheme of development had never been viable. Mr Loxam maintains that the documents which have come into his possession demonstrate that the Council knew that its scheme was not viable; it was not a matter of it no longer being viable if TNL's land was removed and developed separately. As I understand his argument it is that, because the Council's scheme was not capable of being delivered, the effect that a development of TNL's land might have had on the Council's proposals would have been irrelevant to its prospects of obtaining planning permission.
18. The first difficulty with Mr Loxam's proposition is that the issue of the viability of the development of Luneside East was investigated by the Tribunal in 2010. If there was a case to be made about the relative viability of the Council's scheme, then it needed to be made in 2010. TNL was professionally represented throughout the compensation proceedings. TNL could have undertaken an appraisal of the CPO scheme or individual components of it relying on material which could have been obtained if an application had been made for disclosure. The omission of TNL and its advisers to seek disclosure of the Council's own assessments was the basis on which earlier applications to admit new evidence and to set aside the decision of the Tribunal in 2010 were rejected. The same objection applies to the admission of the material Mr Loxam now wishes to rely on.

19. As for the allegation that the Council presented a case to the Tribunal which it knew to be false, there is nothing in the material which Mr Loxam has deployed to support that inference. I repeat, the issue for the Tribunal was the value for compensation purposes of TNL's land on 10 November 2006. As the Tribunal recorded in its 2010 decision at [34] the acquiring authority made no secret of the fact that its scheme was to be funded through public monies totalling more than £10m. The documents Mr Loxam relies on almost all postdate the valuation date and (with the exception of Mr Massie's true views on the value of TNL's claim) those which precede it are consistent with the picture presented to the Tribunal in 2010. The only pre-valuation date document to which Mr Loxam drew my attention was a letter of 3 October 2006 from the Council to its development partner, English Partnerships, warning of some budget overrun compared to estimates made in 2004 and projecting an overall shortfall of £650,000, for which additional public support was being sought. Later documents show that the Council's assessment, or that of its developer, became more pessimistic. That might not be thought surprising given the global financial crisis which intervened between the valuation date and the Tribunal hearing, but whatever the underlying reasons for those revised assessments they can have had no effect on the value of the land in November 2006. The suggestion that any of this material supports a case of dishonesty by the Council is wholly untenable.
20. The Tribunal has power under Rule 8(3) of the Tribunal's Rules to strike out a notice of reference if it considers it has no reasonable prospect of success. The notice of reference in this case had not yet been served on the respondent and this hearing has been convened to enable Mr Loxam to seek to demonstrate that the reference should be permitted to continue.
21. I take the view, once again, that the material on which Mr Loxam seeks to rely could have been obtained and deployed before the Tribunal in the first reference. None of the material supports the allegation of fraud. There is therefore no basis on which the Tribunal could set aside its decision in the first reference to enable the new evidence to be presented. There is no realistic prospect of the claimant's case succeeding and I will make an order striking it out.

Martin Rodger QC,  
Deputy Chamber President

5 August 2021