



ACQ/25/2006

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – derelict house – comparables – relevance of price achieved by private tender – compensation awarded £147,500.

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

EVER ALAN MEGHNAGI

Claimant

and

LONDON BOROUGH OF HACKNEY

Respondent

**Re: 24 Lea Bridge Road
London E5 9QD**

Before: N J Rose FRICS

**Sitting at: Procession House, 110 New Bridge Street,
London EC4V 6JL
on 6 December 2007**

Richard Colbey, instructed by direct access, for the Claimant
Megan Thomas, instructed by Borough Secretary and Solicitor, for the Acquiring Authority

DECISION

1. This is a reference by the claimant, Mr Ever Alan Meghnagi, to determine the amount of compensation payable for the freehold interest in a house known as 24 Lea Bridge Road, London, E5 9QD. That property was compulsorily acquired under the London Borough of Hackney (Lea Bridge Road) Compulsory Purchase Order 2000, which was made under section 17 of the Housing Act 1985 on 29 February 2000 and confirmed by the Secretary of State for Environment, Transport and the Regions on 17 April 2000.

2. A general vesting declaration was made on 10 October 2000 and the freehold interest vested in the London Borough of Hackney, the acquiring authority, on 13 November 2000, which is the valuation date.

3. The claimant lived in the subject property with his family until about 1993, when he moved elsewhere due to the breakdown of his marriage. His wife and children continued in occupation until 1997. After they left the property was occupied by squatters, its condition deteriorated and, by the valuation date, it was in a derelict state. Before me the amount claimed was £320,000 and the acquiring authority's valuation was £120,000.

4. Mr Richard Colbey of Counsel appeared for the claimant, whom he called as a witness. He also called, as expert witness, Mr R I Craig, MRICS, a valuer with Countrywide Surveyors based at that firm's office in Highams Park. Counsel for the acquiring authority, Miss Megan Thomas, called one expert witness, Mr H R M Thomas, MRICS, acting valuation manager with the acquiring authority. Counsel indicated that they were content to leave me to decide whether a site inspection would be of assistance and I decided that it would not.

5. From the evidence I find the following facts. The subject property is in the Lower Clapton area of the London Borough of Hackney. It is located on the A104, which is a major road connecting the borough with north east London. The area was developed in the second half of the nineteenth century and much of the original housing survives. Many of the properties remain as single family dwellings, but some larger houses have been converted into flats. There are few very large houses in the area. Some piecemeal redevelopment has taken place, mainly municipal housing developed by the local authority and housing associations. The general quality of the residential stock has improved in the last quarter of a century as the area has become desirable for owner occupation and there has been a rapid decline in private rented housing in the locality.

6. The subject property is reasonably well located for services and local facilities. There are local shops available on Lower Clapton Road and the main town centre facilities of central Hackney, including major chain stores and leisure facilities, are within one mile. The nearest open space is Millfields Recreation Ground, a short distance away. The nearest railway station is Clapton which provides direct train services to central London, whilst numerous bus routes serve Lower Clapton Road.

7. The subject property comprises a Victorian house arranged on two storeys and an attic floor and with a short front garden and a larger back garden. Internally it was completely derelict with window frames in poor condition, missing, loose and rotten floorboards, rickety staircases, extensive areas of damaged ceilings and internal partitions or plasterwork and obsolete/damaged/missing services. Externally, the slate covered roof was reasonably intact to the front, but to the rear almost all the slates were missing, resulting in severe penetrating dampness to the interior. The house was completely uninhabitable. Total refurbishment of the interior, the roof, window frames and gutters/downpipes was required.

8. The accommodation was as follows:

Ground floor: Lounge, dining room and kitchen

First floor: Two bedrooms and bathroom

Second floor: Two bedrooms

9. The claimant said that the value of the subject property at the relevant date was in the region of £320,000, but he has no valuation experience and he did not produce any reliable evidence to support his assertion. I obtained no assistance from this aspect of his evidence.

10. Mr Craig was instructed to value the property in December 2001. He then reported that, in his view, it was worth £240,000 in its existing condition. Five years later he was asked to provide a valuation of the property as at January 2001 – a few weeks after the relevant date. He then reduced his valuation to £230,000 to reflect the increase in values throughout 2001. He reiterated that figure in evidence at the Tribunal and referred in support of it to the sales of three properties in the vicinity of Lea Bridge Road, between November 2000 and March 2001, at prices between £220,000 and £250,000.

11. Mr Thomas valued the subject property at £120,000. In support of that figure he relied on the sale of the subject property itself, which was completed in April 2002 at £133,150 and on a number of sales of other properties, some by private treaty and some by auction.

12. In general, I obtained little assistance from the comparable evidence submitted by the experts. They had not inspected any of the properties internally, they had no information - apart from guesswork - as to their condition and no reliable information as to their sizes or accommodation layout. Nor, since they were not qualified to do so, were they able to provide a reliable estimate of the cost of the works which were necessary to bring the subject property into habitable condition.

13. In those circumstances I consider that the most reliable starting point in assessing the value of the subject property is the price of £133,150 which the acquiring authority obtained for it in April 2002. The background to that transaction is as follows. The acquiring authority instructed Messrs Andrews and Robertson, chartered surveyors and auctioneers of Camberwell Green, London, SE5, to offer the property for sale in its dilapidated state by auction on

11 December 2000. In their marketing report to the acquiring authority dated 21 November 2000 the auctioneers said:

“Whilst the market has levelled off in recent months, we consider that the property will attract a reasonable level of interest at auction from small scale builders/developers. I would envisage that in view of its size and location the likely interest will be for its renovation and conversion into self-contained flats. The adjoining property, No.26, which apparently comprised 1 x one bedroom and 1 x two bedroom flat was sold by auction in May 1999 for £136,000. This was clearly in a better state of repair than No.24 although I note from the auction details that an internal inspection had not been made. The market has moved up a little since that time although over the last few months there has been a general levelling off of values.

With regard to a guide price we would recommend a figure of £70,000 plus. As you will appreciate in view of the state of the property this is necessarily a ‘ballpark’ figure but I would consider the guide at this level would generate interest at the auction. The amount of reserve can be considered a day or two before the auction once we have the benefit of feedback from the period of marketing”.

14. Two days later the acquiring authority was notified that the claimant had applied for judicial review of its actions in relation to the compulsory purchase order and the subject property was therefore withdrawn from the auction. The application for judicial review was dismissed on 18 January 2001 and permission to appeal against that decision to the Court of Appeal was refused on 17 May 2001.

15. The acquiring authority then decided that, rather than offering the property by auction, it would instruct Andrews and Robertson to invite offers on an informal tender basis from all parties who had registered an interest in the property prior to the proposed auction sale in December 2000 and also from everybody on their mailing list. In addition, Andrews and Robertson announced that the property was ready for sale during the course of its auction in early 2001. The reason for the change in the method of sale was that the acquiring authority had decided that it wished to be able to exercise control over the identity of the purchaser, to ensure that the property would be rapidly restored to residential occupation in accordance with its strategy for dealing with empty properties.

16. The invitation to tender stated that the property was a

“freehold two storey plus attic floor mid terrace house with extensive fire damage...external viewing only.”

Under the heading “Description” Andrews and Robertson said:

“The property is in a derelict and dangerous condition and access for an inspection has not been possible”.

Prospective purchasers were informed that

“in addition to the purchase price an additional sum equivalent to 3% of the purchase price will be payable as a contribution to the Council’s valuation and legal costs”.

Moreover, the successful purchaser would have to provide a bond for £80,000 in order to guarantee that the property was renovated to the required standard.

17. Fifteen bids were received by the specified closing date in July 2001. The three highest offers were £135,000, £133,150 and £130,000. The next highest was £100,000. After making the necessary enquiries, the acquiring authority’s private sector housing unit decided to accept the second highest offer, because it was satisfied that it had been made by a company which would be able to start the necessary building work at an early date. As a result of staff problems in the acquiring authority’s legal department, however, the sale was not in fact completed until 10 April 2002. In cross-examination Mr Thomas agreed that, for the purposes of assessing the value in the open market, there was no reason why the highest offer, £135,000, should be disregarded. He also accepted that it would be appropriate to reflect the 3% additional payment when applying this evidence, because such liability would not accrue to a purchaser in a normal market transaction.

18. Mr Craig did not consider that any weight should be attached to the results of the informal tender because the property was not properly marketed and Andrews and Robertson were not based in the Hackney area. Although certain additional steps might have been taken to make the property’s availability more widely known, for example, an agent’s board and press advertising, the fact that a large number of offers were received and that the top three were within a range of less than 4% of each other suggests that the highest offer submitted was the best that could reasonably have been obtained in July 2001, for the property in its then physical condition and on the basis required by the tender conditions.

19. So far as the physical condition of the subject property is concerned, it was not suggested that there was any significant change between the valuation date and the tender date for which an adjustment should be made. (The claimant suggested that some layers of wallpaper had been stripped off by the acquiring authority’s builders, but even if they had I do not consider this would have had a material effect on value, since redecoration throughout was plainly required). As for the conditions imposed by the tender, the most significant in my judgment is that prospective purchasers were required to submit their offers on the basis of an external inspection only. They were told that the property had suffered extensive fire damage and was in a derelict and dangerous condition and they no doubt calculated their bids on that assumption. Although, on the basis of the evidence before me, I am satisfied that the building was indeed derelict and dangerous, I consider that the sparse description provided in the tender particulars would have encouraged prospective purchasers to overestimate the extent of the building work required.

20. There are two reasons for this conclusion. Firstly, the reference to extensive fire damage appears to have been an exaggeration. Mr Thomas said

“The fire appeared to have been extinguished at a reasonably early stage and damage was to fabric already seriously decayed. In consequence the fire was not considered to have had a great impact on the value of the property”.

21. Secondly, the reference to “dangerous condition” is likely to have given the impression that the main structure of the building was unsound and might require total renewal. This consideration would have been particularly relevant in the case of the rear elevation, which was not visible from a mere external inspection. In fact, Mr Thomas’s evidence was that

“a total refurbishment of the interior, the roof, window frames and gutters/downpipes was required, but that any structural rebuilding would be very limited in extent”.

22. I do not consider that any of the expressions of opinion of the necessary building costs to which I was referred is reliable. (I disregard a written estimate of £30,000 provided by an architect, because he was not called to explain the basis of his calculations). It is, however, common ground that the cost would have been significantly below the figure of £80,000 for which the purchaser was required to provide a bond and Mr Thomas fairly accepted that a purchaser might have based his bid on the assumption that the cost of the work would indeed amount to £80,000.

23. In what is necessarily an imprecise exercise, I have come to the conclusion that the highest tender offer underestimated the value of the subject property by 15%, because it assumed that the cost of the necessary building works was significantly higher than was, in fact, the case. The offer of £135,000 therefore suggests a market value in July 2001 of £163,500, as follows:

| | |
|---|--------------------------------|
| Highest offer: | £135,000 |
| Add 3% fees: | <u>£4,050</u> |
| Total payable, representing 85% of value: | £139,050 |
| Full market value: | £163,588, say, <u>£163,500</u> |

24. Mr Thomas adjusted the sale price to reflect the difference in time by reference to the Land Registry Index for house prices in Hackney between November 2000 and July 2001. Using the relevant index figures agreed during the course of the hearing, this suggests a value at the relevant date of £147,500, as follows:

$$\frac{£163,500 \times 107.6}{119.0} = £147,837, \text{ say } \underline{£147,500}$$

25. The only other item of evidence which seems to me to provide assistance is the price of £136,000 which was paid at auction in May 1999 for the immediately adjoining property, No.26. It is agreed that No.26 is the same size as the subject property, although it was arranged as two flats as opposed to a single house. It is also agreed that, depending on the

index used, the sale price was equivalent to between £169,537 and £172,916 at the valuation date. I do not think that this evidence is of sufficient weight to justify an adjustment to the figure of £147,500 at which I have arrived based on the sale of the subject property itself. Firstly, No.22 was arranged as two flats, whereas there was some doubt at the valuation date as to whether planning permission would have been granted to convert the subject property into flats, contrary to the policy on conversions contained in the Unitary Development Plan 1995. In this connection, I attach no weight to the claimant's unsupported assertion that, before the valuation date, he had obtained "oral pre-planning permission for two flats". Secondly, although the evidence as to the condition of No.26 is sparse, Andrews and Robertson dealt with the sales of both properties and they were clearly of the view that No.26 was in a better state of repair than the subject property, albeit they had not inspected No.26 internally.

26. The claimant relied on a letter from Mr G Lubelsky dated 30 August 2000, which offered £195,000 for the freehold interest in the subject property. Rather surprisingly, that offer was made some months after the CPO had been confirmed and shortly before the acquiring authority proposed to take possession of the property. Mr Lubelsky was not prepared to give evidence explaining his offer to the Tribunal and I attach no weight to it. Nor do I obtain assistance from any of the various verbal offers which the claimant suggested he had received for the property. There was no evidence to corroborate these offers apart from a vague reference to one in Mr Lubelsky's letter and their existence is inconsistent with the claimant's suggestion that he was not interested in selling the property.

27. I determine the compensation payable for the freehold interest in 24 Lea Bridge Road, London, E5 9QD at £147,500. Mr Colbey suggested that, because the value of residential property in London has increased since the valuation date at a far greater rate than the statutory interest rate payable on compulsory acquisition,

“the compulsory purchase legislation should be read in such a way as to minimise that confiscatory effect which is best achieved by resolving any valuation doubts in favour of the claimant and allowing compound interest”.

The task of the Tribunal is to assess the value of the acquired property at the valuation date. It has no discretion to award a different level of compensation because the view might be taken that interest payments are inadequate. Moreover, interest is a matter to be determined in accordance with the relevant statutory provisions. It is not a matter for the Tribunal.

28. A letter on costs accompanies this decision, which will take effect when the question of costs is decided.

Dated: 20 December 2007

N J Rose, FRICS