

DECISION

1. This is a decision to determine the compensation payable by Heathrow Airport Limited (the acquiring authority), under the Heathrow Express Railway Act 1991 (the CPO), to Mrs Margaret Veronica Riordan (the claimant) for the compulsory acquisition of substrata beneath 623 Sipson Road, Yiewsley, Middlesex (the subject property).

2. Mrs Patricia Gower appeared for the claimant with permission of the Tribunal. For the acquiring authority, Asitha Ranatunga of counsel called John Matthew Scott Bodley BSc MRICS IRRV of Drivers Jonas who gave valuation evidence.

3. The land, which comprised a tube of subsoil and a buffer zone some 16.5 metres below the front garden of the subject property, was required in connection with the construction of the Heathrow Express, the high-speed subterranean rail link between Paddington and Heathrow Airport. On 20 October 1994, the acquiring authority simultaneously served Notice to Treat and Notice of Entry on the claimant, who subsequently, on 7 November 1994, lodged a claim in answer to the Notice to Treat seeking compensation in the sum of £500. On 10 November 1994, the acquiring authority wrote to the claimant confirming agreement to that proposed consideration.

4. Due to an administrative error by the acquiring authority, the agreement was not formalised, and a legal transfer of the interest was thus not completed at the time. Subsequently, in October 1995 (which is the agreed valuation date for the purposes of this reference), the acquiring authority entered and took possession of the land. The error regarding the transfer (and the payment of compensation) went unnoticed for some 10 years and, upon realising the oversight, the acquiring authority made attempts to regularise the situation, and made contact again with the claimant. Unfortunately, by this time, Mrs Riordan was suffering from ill health to the extent that she had no recollection of the matter, and was mentally incapable of concluding the transfer.

5. Mrs Patricia Gower, the claimant's daughter, took up matters on her mother's behalf and the family's solicitors, Bird and Lovibond of Uxbridge, entered into correspondence with the acquiring authority. In the meantime, due to the sensitivity of the matter, the acquiring authority increased their offer to £1,000 (to include statutory interest together with solicitors' and surveyors' reasonable fees). This was accepted by Mrs Gower on behalf of her mother, and arrangements were made for cheques to be drawn to cover the compensation, the claimant's solicitors fees and £350 to London Borough of Hillingdon being its charges in relation to the transfer. However, on 6 September 2006, Bird and Lovibond returned the cheques due to the fact they had "been advised that Mrs M V Riordan now lacks the mental capacity to enter into this transfer."

6. In May 2007, the claimant's solicitors advised that the only way to resolve the matter would be for the claimant's family to make an approach to the Court of Protection for the appointment of a receiver pursuant to the Mental Health Act 1983 [subsequently repealed by

the Mental Capacity Act 2005 which came into effect in October 2007, but principally has the same effect] as, by this time, due to the claimant's mental incapacity, it was too late for Mrs Gower to be given Power of Attorney. Whilst the acquiring authority initially agreed to pay, or to contribute towards the cost of an application for the appointment of a receiver, it became apparent that the time and costs involved would be prohibitive, far exceeding the value of the land. Also, as the family had confirmed that such an appointment was not otherwise required in connection with Mrs Riordan's affairs, that route was deemed inappropriate. It was decided therefore that the only remaining alternative was to adopt the Owners Without Power to Sell and Disabilities Procedure as set out within Schedule 1 to the Compulsory Purchase Act 1965. This, in the view of the authority's solicitors, was the appropriate route to be taken when all other avenues have been exhausted. Under this provision, they said, once the compensation has been determined by the Lands Tribunal, the land would be transferred by Deed Poll, and the money would be paid into court to the credit of the claimant.

7. A notice of reference was thus lodged with the Tribunal on 13 November 2007. This was undertaken with the acquiescence and agreement of Mrs Gower as, in August 2007 Bird and Lovibond advised that they were no longer on the record and the acquiring authority has been communicating directly with her since then.

8. Mrs Gower confirmed that her mother, who now resides in a care home, has deteriorated in terms of her health and mental capacity to the extent that she is now barely conscious, cannot speak and fails to recognise even close members of her family. She said that the family were happy with the level of compensation that had been offered, and it was pointed out that the initial compensation of £500 had been agreed between Mrs Riordan and the acquiring authority. It was only the fact that the formalities were never legally completed, and the subsequent deterioration in her mother's health and mental capacity over a period in excess of 10 years, that meant the matter remained unresolved. Mrs Gower said that the acquiring authority had been extremely helpful and incredibly understanding, and she was grateful for all that they had done to bring matters to a satisfactory conclusion.

9. Mr Bodley is a chartered surveyor, and a partner in Drivers Jonas, commercial and residential property consultants of London EC4. He has been involved with the compulsory acquisition of substrata interests for the London Development Agency and other statutory bodies and has specialised in compulsory purchase work since 1995. He produced an expert witness report and appendices which set out the background to the case as summarised above, and which included his opinion of the value of the subject land at £50. He explained that the initial acceptance of the claimant's figure of £500 and the subsequent increase to £1,000 were not based upon any particular valuation logic or methodology. However, he produced an explanatory note explaining how the £1,000 offer of compensation was made up. To the £50 land value was added statutory interest from 1 October 1995 to 11 April 2008 (the hearing date) at £30.18. The estimated fees for the LB Hillingdon to release a Caution against the land was £350 and Bird and Lovibond's fees for acting in the early stages were £537.50 inc VAT. This amounted in total to £1,017.68 – say £1,000.

10. Confirming his opinion of the open market value of the land at a nominal £50, Mr Bodley said that that in making that assessment he had considered two legal principles that were relevant to this case. Firstly, he was required to disregard any increase or decrease in value of

the land that was attributable solely to the scheme of acquisition or development. In other words, he said, that valuation must reflect the “no-scheme world.” Secondly, under Rule (3) of section 5 of the Land Compensation Act 1961, it was necessary to consider whether the land had any special suitability which must be also be disregarded. Whilst the land undoubtedly had such suitability for the proposed scheme, the purpose of the development was one for which there would be no market apart from an authority possessing compulsory purchase powers, and any additional value created by that should, indeed, be disregarded. Mr Bodley said that there were no issues of severance or injurious affection to be considered, nor were there any items of disturbance (under Rule (6) of section 5), other than the reimbursement of the claimant’s properly incurred professional fees.

11. Mr Bodley said that he had concluded a number of similar acquisitions where the compensation was agreed at £50 plus reasonable surveyors and legal fees. He said that such a level of compensation was in line with that determined in the recent Lands Tribunal decision of *Port of London Authority v Transport for London* [2008] 48 RVR 93, where the principles were very similar.

Conclusion

12. The relevant sections of Schedule 1 to the Compulsory Purchase Act 1965 provide:

1 - (1) The provisions of this Schedule have effect subject to section 42(7) of the Law of Property Act 1925 (which provides that if on a compulsory purchase title could have been made without a payment into court, title shall be made in that way unless the purchaser otherwise elects).

2. - The provisions of this Schedule –

(a) ...

[(b) do not have effect in relation to a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act if -

(i) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for the person by the Court of Protection, and

(ii) the donee or deputy has power in relation to the person for the purposes of this Act]

Valuation on purchase by agreement

4. – (1) Subject to this paragraph, the compensation to be paid for any land to be purchased from a person under any disability or incapacity who has no power to sell or convey the land except under this Schedule, or for any permanent damage or injury to any such land, shall be determined by the valuation of two surveyors, one of whom shall be nominated by the acquiring authority, and the other by the other party.

(2) If the two surveyors cannot agree on a valuation, two justices of the peace may, on the application of either party, and after notice to the other party, nominate a third surveyor to make the valuation instead of the other two surveyors.

(3) Each of the two surveyors or, as the case may be, the third surveyor shall annex to any valuation made by him a declaration in writing signed by him of the correctness of the valuation.

(4) No valuation need be made under this paragraph if the compensation has been determined by, or by a member of, the Lands Tribunal in pursuance of the provisions of this Act or under paragraph 1 of Schedule 2 to this Act.

(5) ...

Application of compensation payable in respect of interest of person under disability

6. – (1) This paragraph applies to the compensation in respect of any land or interest in land purchased by the acquiring authority from a person who has no power to sell or convey it except in this Schedule, and compensation in respect of any permanent damage to such land.

(2) Subject to this Schedule the compensation shall be paid into court

Conveyance of the land or interest

10. – (1) When the compensation agreed or awarded in respect of the land has been paid into court under the foregoing provisions of this Schedule, the owner of the land (including all parties who are by this Schedule enabled to sell or convey the land) shall, when required to do so by the acquiring authority, duly convey the land or interest to the acquiring authority, or as they direct.

(2) If there is a failure to comply with the foregoing sub-paragraph, or a failure to adduce a good title to the land to the satisfaction of the acquiring authority, it shall be lawful for the acquiring authority to execute a deed poll containing a description of the land, and reciting its acquisition by the acquiring authority, the names of the parties from whom it was purchased, the amount of compensation paid into court and the default.

(3) On execution of the deed poll all the estate and interest in the land belonging to, or capable of being sold and conveyed by, any person as between whom and the acquiring authority the compensation was agreed or awarded and paid into court shall vest absolutely in the acquiring authority, and as against all such persons and all parties on behalf of whom they are enabled by this Schedule to sell and convey, the acquiring authority shall be entitled to immediate possession of the land.

13. I am satisfied that Schedule 1 applies in this case and that Mr Bodley's evidence supports his valuation. In the light of this, and the evidence produced at the hearing, I determine that Heathrow Airport limited shall pay compensation in the sum of £1,000 to include statutory interest, the pre-reference solicitors' fees and legal costs of transfer as outlined.

14. I referred at the hearing to the question of the fact that under Schedule 1, it is a requirement that the compensation is paid into court, even though that may not be what was initially anticipated, or indeed, required by the claimant's family. However, as I said, that question goes beyond the Tribunal's jurisdiction, and it will be for the acquiring authority's advisers to consider, if it is possible to do so, how any problems in that area might be resolved.

15. This determination disposes of the issue in this case, and, as it was heard under the standard procedure, the question of costs of the reference remains to be resolved before the decision becomes final. In the circumstances, and in the light of the fact that no submissions on costs were made at the hearing, I intend to determine that, if no written submissions on costs are received within 14 days of the date of this decision, I shall make no order for costs.

DATED 14 April 2008

(Signed) P R Francis FRICS

ADDENDUM

16. No submissions on costs have been received from the claimant, and the Acquiring Authority has advised that it is content with the suggestion made in the above paragraph. In the circumstances, therefore, I determine that there shall be no order for costs.

DATED 12 May 2008

(Signed) P R Francis FRICS