

DECISION

Introduction

1. This is a reference, heard under the Simplified Procedure (Rule 28, Lands Tribunal Rules 1996), to determine the compensation (if any) payable to Mr Michael Henry Scholes (the claimant) of 132 Fort Ann Road, Batley, West Yorkshire (the subject property) under Part 1 of the Land Compensation Act 1973 (the Act) following the coming into use of a highway improvement scheme at Fort Ann Road on 1 May 2000.
2. The claimant appeared in person, and Mr Dermot Pearson, Senior Legal Officer with Kirklees, appeared for the compensating authority and called Mr Michael Hamilton FRICS who gave expert evidence.
3. I carried out an accompanied inspection the of Fort Ann Road extension from the subject property, and the surrounding area immediately following the hearing.

Background

4. The reference to the Tribunal was made on 28 January 2008, and related to alleged depreciation in the value of the property arising from physical factors caused by the use of three sets of public works, namely:
 1. Grange Road extension and new road construction (Challenge Way) to form M1, M62 link road to Batley
 2. The construction of Mill Forest Way
 3. The extension of Fort Ann Road to include the construction of a turning head and two parking spaces.

On being notified of the reference, the compensating authority took the point that there had been an earlier reference before the Tribunal in which the same claims had been advanced by the claimant, and in their view all three had been settled on the following terms: (1) £3,000 plus £175 surveyor's fees, (2) £2,605 plus £220 county court fee and expenses, (3) Nil.

5. A dispute arose as to whether (3) had, indeed, been compromised in the terms of settlement, that being determined as a preliminary issue by HH Judge Huskinson in his decision of 20 January 2009. He concluded, in paragraph 24, that it had not, saying:

“...I conclude that the parties have entered into a contract of compromise in respect of the claimant’s claim for compensation under headings (1) and (2) ... but they have not compromised the claim ... under heading (3). Accordingly the Tribunal has no jurisdiction to consider claims (1) or (2), but it does have jurisdiction to consider claim (3) because this has not been compromised.”

This determination, therefore, relates solely to the Fort Ann Road extension.

6. The subject property is a 4 bedroom period detached house located at the end of Fort Ann Road, a cul-de-sac and continuation of Oaks Road, Batley. It is the last property on the south side of the street, and prior to the completion of the public works, the adopted section of Fort Ann Road terminated adjacent to the property’s eastern boundary, with an unadopted bridleway continuing between fields in an easterly direction. In 1995 planning consent was obtained for a development of 156 residential dwellings on land to the north and northeast, to be served by a new link road (Mill Forest Way) which now runs north/south about 30 metres east of the former end of the cul-de-sac. As part of that scheme, but subject to a different planning consent (Application ref: 96/62/92351/E made 10 September 1996), a St Anne’s Community Services Care Home for people with learning difficulties (7 residents) was constructed directly opposite the subject property, together with an approximately 28 metre extension to Fort Ann Road, incorporating a turning head and two car parking spaces. The road improvement and parking constitute the public works to which this claim relates. The extension was opened to traffic on 1 May 2000, and compensation is therefore to be assessed at the first claim day under the Act, 1 May 2001.

Claimant’s case

7. Mr Scholes said that he was claiming the sum of £9,000 for the effects of noise and pollution caused by the increased traffic flowing past his property both in respect of the use of the care home, and generally by those utilising the turning area. He said that prior to the road extension and the construction of the care home, the road simply petered out in front of his house. With there being no turning area, residents used their driveways to turn and the weekly refuse collection lorry reversed up the road.

8. Now, there were two people carriers serving the care home, staff and visitors use the turning head and often parked on it, as well as on the two spaces that had been provided as part of the scheme. There was an additional refuse collection for the home’s waste, and there were frequent deliveries to the premises. The refuse lorries now use the turning head, but because it is not very large, they have to mount the pavement to complete their manoeuvres. Many other vehicles now turn on the new section of road and, Mr Scholes said, he had counted up to 125 vehicles per day, this meaning there were some 250 vehicle movements past his house. In addition, people coming along Fort Ann Road thinking they can gain access to the estate served by Mill Forest Way, frequently leave

9. Asked how the £9,000 claim was calculated, Mr Scholes said that it was purely a portion of the whole of the original claim for the three schemes, which had been assessed at £28,000 on advice from his then appointed surveyor, Mr David Horner FRICS, received in 1996. He accepted that that advice had been received before the Fort Ann Road extension was constructed, but said that Mr Horner had known about the proposal. It was difficult, he admitted, to gauge precisely the affect that the increased traffic and use of the road had had on the value of his house, particularly as there had been an unprecedented boom in values during the period between 1996 and the valuation date.

Compensating authority's case

10. Mr Pearson submitted that compensation under Part 1 was to be assessed by reference to the depreciation in the value of land by physical factors caused by the use of public works. The only relevant factors were noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the land in respect of which the claim was made of any solid or liquid substance. It was important to note that the source of these factors had to be within the public works (the road extension and turning head), and not from factors emanating from the pre-existing part of Fort Ann Road (see *Williamson v Cumbria County Council* (1994) 2 EGLR 206). Thus any intensification of use of that part of the road was not to be taken into account, and other factors such as changes to the nature and character of the area were also irrelevant in these circumstances.

11. Mr Hamilton is a chartered surveyor with over 30 years valuation experience, and is employed as a development surveyor with Kirklees Council. He said that he had been involved with approximately 25 claims under Part 1 of the 1973 Act both with Kirklees, and with his previous employers. He said he was familiar with the area due principally to his involvement and negotiations with the claimant in respect of the other two claims.

12. He said that in his professional opinion, as at the first claim day of 1 May 2001 (the date of the provisional certificate of adoption having been 1 May 2000), there was no depreciation in the value of Mr Scholes's property resulting from the relevant physical factors. This view was principally obtained from his own personal observations, on 3 different occasions, of traffic movements in Mill Forest Way (in connection with one of the other claims), at which time he also counted movements in Fort Ann Road. Those observations were made on 17 August 2006 between 16.10 and 17.00 (78 vehicles on Mill Forest Way), 18 August 2006 between 08.00 and 09.00 (45 vehicles) and 29 October 2009 between 08.00 and 09.00 (58 vehicles). On each occasion, he said he saw only 1

13. Mr Hamilton said that he had investigated sale prices for a number of properties on Fort Ann Road since early 2001 and had taken into consideration the Nationwide House Price Indices to establish increases in value that would have occurred through normal house price inflation. He said that there had been a sale of 45 Fort Ann Road at £88,500 in January 2001, and it had been re-sold in June 2005 at £200,000. That was an increase of 116%, which matched almost exactly the Nationwide figure of 115% over the period. However, he said that whilst that was only a very broad-brush exercise, it amounted to one part of the jigsaw that reinforced his instinct that the use of the public works had made not one iota of difference to the value of the claimant's property. He also accepted, in answer to a question from me, that individual property characteristics, such as condition, whether extensions existed etc, could distort the analysis of general statistical information. He said that in agreeing the other two claims affecting the property, he had "shaken hands" with Mr Scholes on a value of £100,000, although he accepted that this had not been committed to writing.

14. It was his view that the works to Fort Ann Road were very minor in nature and, if anything, would serve to improve the situation in front of Mr Scholes's house. Whereas previously vehicles (especially lorries) would have had to make multi-point turns at the narrow end of the road, they could now effect that manoeuvre more quickly and easily in a properly constructed turning area about 35 metres from the subject property. The level of traffic that he had observed, even if it had increased marginally over what was there before, would cause no material increase in noise dust, fumes or any other compensatable physical factors.

15. Mr Scholes had agreed and received £2,600 compensation (assessed as 2.6% of the estimated value of 132 Fort Ann Road of £100,000 at 1 May 2001) for the effects of the Mill Forest Way part of the works and 3.6% for the Challenge Way section. Mr Hamilton said that the present claim resulted in no diminution of value whatsoever, and that the Tribunal should assess compensation in this instance at nil.

Conclusions

16. I noted on my inspection that the vehicular access to the care home, and the off-road parking area to the front of it is off the original part of Fort Ann Road. Thus the people carriers in particular, and some other vehicles using the premises drive on and off that area without needing to use the turning head. Diminution in value (if any) by physical factors caused by the intensified use of the original section of the road cannot be taken into account (per *Williamson*). It is only those factors emanating from use of the new extension and turning head that could, if they were sufficient to cause diminution in value, lead to the award of compensation.

17. During the short time that I was there, two cars passed the claimant's property, turned around on the new section of road, and left. The weekly refuse collection lorry also arrived and, using the turning head, mounted the pavement just as the claimant had said it did. There was activity at the care home, and one of the people carriers that had been parked on the premises, left. It did not use the turning head. One of the two car parking spaces constructed as part of the public works was occupied.

18. I have no doubt in my mind that, since the care home was constructed on what, I was told, was previously open fields opposite the claimant's property, the use of the road in front of his house will have increased. Staff and visitors (other than those who access the parking area directly to the front) will doubtless use the new road extension to turn and possibly also to park. Service delivery vehicles will also use it. However, it seems to me that the use of turning head will be minimal, and I find it hard to reconcile Mr Scholes's suggestion that up to 125 vehicles per day use it with what was apparent on the ground, and with Mr Hamilton's noted figures. Mr Scholes produced no detailed or independent evidence of his purported traffic count, and did not say, for instance, what period in hours over which the count was undertaken.

19. It is for the claimant to prove that diminution in value has occurred to his property, and no evidence was produced that could support that argument. The advice that he had received from Mr Horner in 1996 was 5 years before the first claim day, and in any event he was not called. Other documentation produced with Mr Scholes's statement of case, including a copy of an opinion of counsel were also not related to this property, or even these works, and I can thus attach no weight to them. The limited comparable evidence produced by Mr Hamilton was also of little if any assistance, and I dismiss it.

20. I am however mindful of Mr Hamilton's point that, following the creation of the turning head, vehicles needing to turn around at the end of Fort Ann Road can now do so over a properly constructed section of road that although extremely close, is not directly in front of no. 132. Vehicles no longer, therefore, need to make multi-point turns in the

21. The only physical factors referred to by the claimant that are covered by the Part 1 provisions were increased noise and pollution. In my judgment, any increase that there may have been, directly attributable to the use of the public works the subject of this claim, will have been so minimal as to be barely noticeable, let alone sufficient to have caused the open market value of his house to be reduced. Injurious affection from the construction of Mill Forest Way will have been much more pronounced, but Mr Scholes has accepted compensation for that in one of the other claims.

22. I accept Mr Hamilton's opinion that the works will make "not one iota" of difference, and therefore determine that no compensation is due or payable under this claim.

23. This matter having been determined under the Simplified Procedure, and there being, in my view, no exceptional circumstances to justify my doing otherwise, I make no order as to costs.

DATE

P R Francis FRICS