



Neutral Citation Number: [2024] UKUT 328 (LC)

Case No: LC-2024-656

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)
IN THE MATTER OF A NOTICE OF REFERENCE**

Royal Courts of Justice

22 October 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – Compulsory Purchase – property acquired subject to a mortgage – non-participation of mortgagor – property in disrepair – value less than outstanding mortgage debt – compensation agreed at £35,000 – section 15, Compulsory Purchase Act 1965

BETWEEN:

BANK OF SCOTLAND PLC

Claimant

-and-

BURNLEY BOROUGH COUNCIL

**Acquiring
Authority**

**Re: 11 Kay Street
Padiham
Burnley
BB12 8PJ**

D N Martin TD MRICS FAAV

DETERMINATION ON WRITTEN REPRESENTATIONS

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Introduction

1. This decision, determined under the Tribunal's written representations procedure, concerns the payment of compensation to the former mortgagee of a property which has been compulsorily acquired, where the level of that compensation does not meet the outstanding mortgage debt.
2. Where, as here, the borrowing mortgagor has not agreed the level of compensation nor taken any part in the proceedings, it is not open to the mortgagee and the acquiring authority simply to settle the level of compensation they have agreed. Instead, it is for the Tribunal to determine the compensation to be paid by the acquiring authority under section 15 of the Compulsory Purchase Act 1965 ('the Act').
3. The property concerned is 11 Kay Street, Padiham, Burnley, BB12 8PJ ('the property'), a two bedroom two storey end of terrace dwelling. The absent mortgagor is Ms Patricia Ann Plummer.

Background

4. On 22 July 2005 Ms Plummer acquired the leasehold of the property for a price of £59,950 and granted the Bank of Scotland PLC ('the bank') a first legal charge over the property, which was registered on 22 August 2005.
5. The property became vacant from 29 January 2016 and subsequently fell into disrepair. On 4 November 2022 Burnley Borough Council ('the authority') served notice on the bank of their intention to make a compulsory purchase order ('CPO') the purpose of which was to bring the property back into residential use by renovating it so that it could be sold on the open market.
6. The Burnley (11 Kay Street Padiham Burnley) Compulsory Purchase Order 2023 was confirmed on 17 January 2023 and copied to the bank on 20 January 2023. By a letter dated 27 January 2023 the authority served notice on the bank that a General Vesting Declaration ('GVD') had been executed on 25 January 2023 and that the property would vest in the authority on 2 May 2023. This is the valuation date for assessment of compensation.
7. The authority's surveyor assessed the market value of the property for compensation at £35,000 and on 6 December 2023 provided the bank's solicitors with a copy of the inspection sheet supporting the valuation. The value in assumed good repair was said to be in the region of £80,000, with deductions for repair of £45,000. Three sales of properties in the locality were referenced.
8. The bank arranged for a valuation by external inspection only, and received a report dated 15 December 2023 which assessed market value at £78,000. Assumptions were made that there were no structural defects to the property and that the kitchen was serviceable.
9. The authority commissioned a non-invasive structural survey of the property. The report dated 29 April 2024 confirmed that internally the property was in very poor condition due to water ingress to the two storey extension, likely to be the result of a failure of the flat roof. Structural cracking to the end elevation was evident, with likely ongoing movement.

10. The bank’s surveyor carried out an internal inspection of the property on 18 June 2024 and reported that given the structural problems and the poor internal condition of the property demand for it would be limited except at a price where a reasonable profit could be generated by refurbishment. Four properties in Padiham suitable for refurbishment, but without structural issues, had been sold between August 2022 and September 2023 at prices between £42,500 and £50,000. The surveyor reported a revised valuation of the property at £35,000.
11. On 16 July 2024 the bank confirmed that the sum of £35,000 was acceptable as compensation but that the amount was less than the mortgage debt so the consent of Ms Plummer was required.
12. The bank has been unable to make contact with Ms Plummer at the correspondence address held for her in their mortgage records. A trace search confirmed the same correspondence address. Telephone calls and a voicemail message have been unanswered. Accordingly, without the agreement of the mortgagor to the compensation sum the jurisdiction of the Tribunal is engaged.
13. On 3 September 2024, the bank made a reference to the Tribunal to determine the level of compensation payable. The reference was subsequently transferred to the Tribunal’s written reference procedure for determination on the papers submitted.
14. The Tribunal identified Ms Plummer as a potential second respondent and on 17 September 2024 served notice of the reference, together with supporting documents and Tribunal directions, on her at her correspondence address. Confirmation of service was received. The directions required a response to the notice of reference by 15 October 2024. No response was received.

Statutory Provisions

15. 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. ...”

Ms Plummer is the “person entitled to the equity of redemption” (i.e. the person entitled to redeem the mortgage) and her lack of engagement means that the compensation to be paid must be determined by the Tribunal under section 15(1).

Evidence

16. I have read the valuation evidence in the form of the authority's valuation report and the first and subsequent valuation reports provided by the bank's surveyor. I am satisfied that the compensation sum agreed by the parties takes account of prevailing market conditions at the date of valuation, supported by sales of comparable properties in the locality, and that suitable allowances have been made to reflect the condition of the property as described and evidenced by photographs.
17. The authority in its response to the notice of claim confirms that the sum of £35,000 was agreed with the bank, subject to any representations made by the former owner, who has been uncontactable. It also confirms that statutory interest is payable on the compensation from the date of vesting on 2 May 2023, together with the reasonable costs of the claimant incurred in negotiating and settling the compensation claim.

Determination

18. I determine the value of the subject property at the valuation date at £35,000.
19. I am satisfied on the evidence that the mortgagor has chosen not to participate in the negotiations and she has not responded to the reference. The bank made a valid claim under section 15(1) of the Act, and under section 15(2) I determine that compensation of £35,000, plus any statutory interest, should be paid to the bank in part satisfaction of the mortgage debt secured against the property. The amount of the statutory interest payable shall be agreed between the bank and the authority.

Diane Martin TD MRICS FAAV

22 October 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.