



ACQ/2/2007

**LANDS TRIBUNAL ACT 1949**

***COMPENSATION – Compulsory Purchase – acquisition of shop and premises in connection with town centre development scheme – valuation – methodology – comparables – rental value – yield rate – disturbance – compensation awarded £45,450***

**IN THE MATTER of a NOTICE OF REFERENCE**

**BETWEEN**

**MOHAMMED NAZAR**

**Claimant**

**and**

**PENDLE BOROUGH COUNCIL**

**Acquiring  
Authority**

**Re: 7 Jude Street, Nelson, Lancs BB9 7NP**

**Before: P R Francis FRICS**

**Sitting at: Burnley Combined Court Centre,  
Hammerton Street, Burnley, Lancs BB11 1XD**

**on**

**2 August 2007**

Brian Irlam of Steele Ford and Newton, solicitors of Nelson, for the claimant  
Peter Frost, senior solicitor of Democratic and Legal Services, Borough of Pendle, for the  
acquiring authority

The following case is referred to in this decision:

*Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111

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## **DECISION**

1. This is a decision to determine the amount of compensation payable by Pendle Borough Council (the council) under the Borough of Pendle (The Grand, Nelson) Compulsory Purchase Order 2004 (the CPO) to Mohammed Nazar (the claimant) in respect of the compulsory acquisition of 7 Jude Street, Nelson, Lancs BB9 7NP (the subject property). The case was heard under the Simplified Procedure (Rule 28, Lands Tribunal Rules 1996).
  
2. Brian Irlam, a solicitor with Steele Ford and Newton of Nelson, appeared for the claimant and called David Briffett BSc (Hons) MRICS, managing director of Thomas V Shaw & Co Ltd, Chartered Surveyors of Blackburn, who gave valuation evidence. Peter Frost, senior solicitor with Pendle Borough Council, Legal and Democratic Services, called Mrs Glenys Barnes MRICS of Liberata UK Ltd who gave valuation evidence for the acquiring authority.
  
3. I undertook an accompanied inspection of the site of the former property; the surrounding area of the town centre, and the principal comparables relied upon by both parties on 1 August 2007.

### **The Claim**

4. The claimant's case was that the value of the long-leasehold interest in the subject property at the agreed valuation date of 9 November 2005 was £75,675 to which should be added £2,000 in respect of the forced sale of fixtures and fittings and stock and £2,000 for the claimant's time expended in respect of the matter. The council said the property was worth £38,000 at the time, and there was no entitlement to the claimed items of disturbance.

### **Facts**

5. The parties produced an agreed statement of facts and issues to be determined by the Tribunal. From this, the valuers' expert reports and evidence, and my inspection of the area I find the following facts. The subject property was a two-storey building located on the east side of the Jude Street, and formed the southern end unit of a long terrace of similar buildings, the property immediately adjacent being a warehouse that principally dealt with the sale of beds. To the north it abutted a 3 storey commercial building, used as a printing works, that extended along the rest of the street, and on the opposite side of the road was the rear entrance of Lambert's covered market and former residential properties that had been converted to a carpet warehouse. The subject property had a dressed-stone frontage incorporating a glazed shop window, front door and roller shutters under double-pitched slated roofs and it was believed to have been constructed in the early 20<sup>th</sup> Century. It was laid out as a shop at ground floor, having an agreed retail area of 48.8sq m and a staircase leading to a first floor storeroom of the same size. There was a ladder type staircase leading from there to a room that had been formed in the attic and which contained a bath, washbasin and wc. It had an area of about 28 sq m.

6. Jude Street was a cul-de-sac accessed from Russell Street, which itself connected with Cross Street to the west (which was the main entrance for the covered market) and Scotland Road to the east. Scotland Road was one of the town centre's principal pedestrianised shopping streets, and the rear elevation of the subject property (there was no garden or yard) backed onto a narrow lane (Back Scotland Road) at the rear of the shops on the west side of Scotland Road. The former Grand Cinema, and some of the shops on the northern side of Market Street backed partly onto the southern end of Jude Street. The claimant had acquired the residue of a 999 year lease on the subject property in the early 1970s, and ran a business selling children's clothing until about 2000 when the operation ceased, although some of the stock remained.

7. Following a fire which destroyed the Grand Cinema and damaged adjacent buildings on 29 May 2000, the council considered what should be done with the site, and in January 2001 the Nelson Committee resolved that the site should be redeveloped as part of a wider area. A Planning Brief was issued describing the 0.6ha (1.48 acre) proposed development site as lying "at the heart of Nelson town centre and bound by Market Street, Cross Street, Russell Street and Back Scotland Road". The site was stated to include the area of the old cinema, Cross Street [Lambert's] Market, the Salvation Army Hall and a number of small retail and commercial properties, all of which were in private ownership. Acknowledging that the redevelopment would result in the loss of existing retail units, the Brief indicated that given the high vacancy rate in Nelson, it would be inappropriate to redevelop the site solely for retail use. The council started to acquire properties by agreement in 2003 (including the printing works and former Baines Carpet Warehouse in Jude Street), and the CPO, to be used to acquire the remainder of the required properties (including the subject property), was confirmed by the Secretary of State on 4 August 2005; a General Vesting Declaration was made on 10 October 2005, and the property was formally vested in the council on 9 November 2005, which is the valuation date for the purposes of this reference. The council entered into a development agreement with Barnfield Construction Limited, and a large office development was nearing completion at the time of my inspection. An advance payment of £34,200 has been paid to the claimant, representing 90% of the council's estimate of the value of the subject property.

## **Issues**

8. The issues of fact, valuation and law to be determined are:

Valuation under Rule (2) of section 5 of the Land Compensation Act 1961 (the 1961 Act):

- i. The appropriate methodology to use in determining the long-leasehold value of the subject property as at 9 November 2005.
- ii. Whether Rule (4) of section 5 of the 1961 Act operates to exclude any increase in value attributable to the use of the room created in the roof void.
- iii. The location of the subject property in relation to the principal town centre retail area, and the covered market.

Valuation under Rule (6):

- i. The forced sale value of fixtures fittings and stock.
- ii. Claimant's time.

### **Claimant's case**

9. Mr Briffett, who has over 25 years experience of compulsory purchase matters within east Lancashire, said that he received instructions to act for the claimant in October 2004, firstly in connection with negotiations with the council, and then as expert witness in respect of this reference. He said he was aware that Mr Nazar had, in 2003 and prior to his involvement, agreed a price of £38,000 with the council, but that sale by negotiation did not proceed. He was also aware that the claimant had ceased trading from the property in 2000, although thought that he may have operated his business sporadically since then. He understood that it had been the claimant's intention to re-establish trading from the shop but had been deprived of the opportunity by the scheme. Mr Briffett said he had been advised that only the ground floor was used when the premises did trade, but the first floor could also have been utilised for retail. The attic space, which could in his opinion also have been utilised for storage, had not, to his knowledge, been so used for some years. However, he thought that to use it would not have been unlawful because, although the staircase would not have complied with modern Building Regulations, as the premises were owner occupied, he would be under no compulsion to upgrade the access.

10. It was his case that there was a substantial body of evidence in respect of sales of comparable premises at around the valuation date to show that the claimant could not have replicated his business anywhere within Nelson town centre area for anything like the sum the council had offered. The assessment of fair compensation, he said, had been dealt with at length in *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 where Lord Nicholls said (at125):

“The purpose of these provisions, [the relevant compensation Acts] in Hong Kong and England, is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller. But, subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation for losses fairly attributable to the taking of his land but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail.

Land may, of course, have a special value to a claimant over and above the price it would fetch if sold in the open market. Fair compensation requires that he should be paid for the value of the land to him, not its value generally or its value to the Acquiring Authority.”

The compensation to which Mr Nazar is entitled should be sufficient, Mr Briffett said, to allow him to acquire another retail shop in an equivalent tertiary location close to the town centre.

11. It was also important to note, he said, that the evidence showed the market to have risen significantly between 2003 when the £38,000 was offered and the valuation date some 2 years later, so there was no justification whatsoever for the council not increasing its offer. The RICS Commercial Property Survey showed capital values to have risen throughout the UK by 11.6% in 2004 and 12% in 2005, but the increase in values in poorer areas of northeast Lancashire had been even more dramatic. Whilst the council had relied to a large extent upon the settlements achieved for other properties required for the scheme, he said that by 2003 it was common knowledge that a large area of central Nelson was to be redeveloped, and this had had a deflationary effect on the sale or letting of properties in the area.

12. Mr Briffett said that he had looked at actual sale prices achieved around the relevant date for nearby shops and related them to their rating assessments in the 2005 list. The District Valuer's zone A rent assessments, he said, gave an accurate picture of which properties had better locations than others. He produced a schedule of all the sales of long-leasehold and freehold premises in the centre of Nelson that had taken place between January 2005 and March 2006 and one unit that was being marketed (43 Scotland Road). It showed the prices achieved, the 2005 rateable value, and the zone A rate. He then applied a multiplier by dividing the sale price by the rateable value and, excluding the lowest (41 Every Street), and the highest (15 Manchester Road - a prime town centre shop sold in March 2006) to give an average of 30.27. He then applied this to the rateable value of the subject property as shown in the 2000 Rating List (£2,500) to give a value of £75,675. He said he used the earlier valuation list because there had been a reduction by the 2005 revaluation (to £1,550), which he thought must have been due to the effects of the scheme.

13. Four of the comparable properties were in Scotland Road which he accepted, with zone A rates of between £70 and £100, was a better trading location than Jude Street, although they were very close to the subject property, the whole area could be described as "town centre", and the claimant, to replicate his business elsewhere, would need to buy into that same market. 87 Scotland Road had sold for £5,000 more than the asking price in September 2005, which indicated that the market at that time was strong, and was rising. 14/16 Market Square was a double shop unit very close by and was comparable in many respects, although in cross-examination Mr Briffett accepted its zone A rate was double that which was applicable to the subject property. He also included 41 Every Street, a large end of terrace shop with accommodation over, that had sold for £125,000 in February 2005. It had a zone A rate of £47, which was similar to the subject property (£40) and had a rateable value that was less.

14. In response to the investment valuation methodology that formed part of Mrs Barnes' evidence, Mr Briffett referred to the ground floor unit at 5 Russell Street let at £75 per week that she had mentioned. Transposing its floor areas to 7 Jude Street and including a very small sum for the attic room, indicated a rental value for that of £115.50 pw (£6,006 pa). Applying the yield of 8% that had been achieved on the two sales of 41 Every Street gave an open market value, on an investment basis of £75,075 – very close the conclusion he had come to by comparing sale prices. He disagreed with Mrs Barnes' suggested yield rate, and said that his own firm was selling similar investments at 6.5%. Asked to comment on the FOCUS report

that Mrs Barnes had referred to, Mr Briffett accepted that it indicated Nelson to be rated poorly as a town centre, and that its ranking in comparison with other towns was falling, but he said that did not apply to secondary retail locations.

15. Finally, on the disturbance claim for loss of stock and fixtures and fittings, Mr Briffett admitted that there was no evidence that the claimant was trading at the valuation date and that the property was, and had been for some time, empty for rating purposes. There was also no evidence produced in respect of the claim for Mr Nazar's time in seeking out alternative properties.

### **Acquiring Authority's case**

16. Mrs Barnes has 14 years post-qualification experience of negotiating compensation claims including both residential and commercial properties for Pendle Borough Council. In forming her opinion that the subject property was worth £38,000 at the valuation date, she considered evidence from the settlements that the council had achieved on nearby properties in connection with the scheme and sales of town centre and nearby shop properties outside the scheme area. She also undertook an investment valuation on the basis of rents and yields. Extracts from the FOCUS town report on Nelson and the Nathaniel Lichfield & Partners report that compared prime retail yields in the North West of England were produced, and these indicated, she said, that prime Zone A rents in the best trading area of the town had fallen from £377 per sq m in 1999 (£35 per sq ft) to £323 per sq m (£30 per sq ft) in 2000 and had remained constant since then. Scotland Road (which was a source of a number of the comparables) was one of the top 3 ranking retail streets according to FOCUS, and Nelson's ranking as a town centre had fallen from 500<sup>th</sup> in 2002 to 866<sup>th</sup> in England by 2005. Prime retail yields in Nelson were shown to be consistently above 10%, higher than in all the other major town centres in the surrounding area.

17. As to settlements connected to the scheme, Mrs Barnes said that Baines Carpet Warehouse, which was on the opposite side Jude Street and was four times the size of the subject property, was acquired in March 2003, in advance of the CPO, for £55,000. 7 Russell Street, on the corner of Jude Street, was a double fronted shop with storage above where the retail accommodation was almost twice the size of the subject property's ground floor. That was also acquired in March 2003 for £38,000. Lambert's Market, having a ground floor area of 1,412 sq m was acquired in the same month at £90,000. These settlements, she said, supported her assessment of the value of the subject property and showed how overstated Mr Briffett's figure was.

18. Turning to her analysis of open market non-CPO related sales, Mrs Barnes cited 4 units in Scotland Road but pointed out that that was one of the prime retail streets, as evidenced by the VOA's assessments of Zone A rates of between £70 and £100 per sq m against £40 per sq m for the subject property in the 2005 Rating List. No 57 Scotland Road, a three storey property of 182.4 sq m overall with retail on ground and first floors and storage above, was sold in February 2007 (15 months after the valuation date) for £127,000. If that sale were to be applied to the subject property without adjustment, it would result in a value for 7 Jude Street of £68,000 ( $£127,000/182.4 \times 97.6 = £67,957$ ). Doing the same exercise on 87 Scotland

Road produced a value for the subject property of £50,000, 37 Scotland Road produced £35,000 and No 21 produced £81,527. Thus there was a range of values produced but, Mrs Barnes said, all of those properties were in prime locations, and it followed that Jude Street should be close to the bottom. She also undertook a similar analysis of 41 Every Street, where the VOA's Zone A value was 15% above that for the subject property. It was very much larger at 180.7 sq m overall, and sold for £125,000 in December 2003, giving an equivalent, non-adjusted figure for 7 Jude Street of £67,515. However, it had been refurbished, was located facing a main traffic route through Nelson and was opposite a free public car park. Any comparative value would therefore need to be heavily discounted to reflect these differences.

19. On the investment method, she referred again to 41 Every Street which was available to let at an asking rent of £9,000 pa, although it had been empty for some 18 months with no takers. On a straight comparison, the gross rental value of 7 Jude Street would be £4,861 pa. Doing the same exercise on two other properties suggested an appropriate gross rental value for the subject property of £5,000 pa. However, she said that, following RICS guidance, there should be a deduction of 10% for voids, management, repairs and maintenance to give a net figure of £4,500 pa. As to yield, the Nathaniel Lichfield & Partners report having indicated prime yields of 10% or more, Mrs Barnes said that a 12% return was appropriate to reflect the subject property's secondary location. This resulted in a value of £37,500. In response to a question from the Tribunal, Mrs Barnes accepted that the rental value evidence she had considered in respect of other properties would have been gross, and to discount her assessment of rental value of the subject premises before applying a comparative yield may result in double counting.

20. In cross-examination Mrs Barnes said that she had not adopted Mr Briffett's methodology as it was not an accepted normal valuation process, although she did say that it provided a useful cross-check. She did not accept that the attic room at the subject property could be considered useable accommodation, and had not included any of its area in the assessment of the overall area at 97.6 sq m that she had used for her comparative analyses.

21. Regarding the claimed items of disturbance, Mrs Barnes said that as there was no business operating from the premises at the valuation date, or for some time previously, the council could not have any liability for the value of stock or fixtures and fittings. Also, no evidence had been provided to support Mr Nazar's claim for his time. Mrs Barnes did accept that at the price the council had offered, there appeared to be nothing available to which the claimant could have relocated, however she reiterated that at the time there was no business in operation to relocate. All of the comparables outside the CPO area that had been referred to were in a number of respects better than the subject property, and that was the reason for the higher values. She said that they all had higher Zone A values in their rating assessments, so the Valuation Officer must also have thought they had attributes over and above those at 7 Jude Street.

## Conclusions

22. Firstly, on the question of what was the right methodology to use in determining the value of the subject property, it is in my view equally acceptable to analyse sales prices of comparable properties, or to perform an investment valuation upon the basis of passing rents and appropriate yields, or to use both. However, Mr Briffett's use of the District Valuer's Zone A assessments on a number of properties as applied in the 2005 Rating List, and comparing these with the assessment on the subject property in the 2000 Rating List seems to me inappropriate. If he had used the 2005 Rateable Value of £1,550, and applied the 30.27 multiplier, the resulting figure would have been £46,918. Although Mr Briffett said that he thought the reason the Rateable Value had been reduced was to reflect the adverse effects of the CPO, no evidence was produced to substantiate this. However, in my judgment, whichever of the two assessments he had used, there are two factors that bring his reasoning into question. The first relates to the location of the property in comparison with the comparables he used (issue iii), and the second is the fact that I note the assessment on 7 Jude Street was based solely on the ground floor, whereas Mr Briffett argued that the first floor could have been used for retail purposes and the second was suitable for storage, and indeed included those areas in assessing the rental value on Mrs Barnes' basis (issue ii).

23. Mr Briffett described the location of the premises as "town centre", although he accepted that the street from which most of the comparable sales had been taken, Scotland Road, was a "better trading location". That, it seems to me, was somewhat of an understatement. Scotland Road was undoubtedly one of the principal town centre shopping streets, pedestrianised in part and leading directly into the prime central area at the confluence of Market Street, Leeds Road, and Manchester Road and to the main entrance of the Pendle Rise (former Arndale) shopping centre. At the time of my inspection, Scotland Road had a significant pedestrian foot flow and I note from the FOCUS report that had been referred to in evidence, that it was named as one of the three principal town centre streets. One of the Scotland Road comparables used in the analysis (No 87) was quite a considerable distance from the town centre end of the street, in a non-pedestrianised section, but it was a corner unit in a highly visible location.

24. Also included within the schedule from which Mr Briffett derived his multiplier was a double unit fronting Market Square. He accepted that this had a Zone A rate that was double that applied to the subject property, and it is understandable why. It is an attractive location a short distance along Market Street from the main centre, facing onto the main public library and again, at about 4 pm on 1 August 2007, was busy with pedestrians. At the valuation date, those units were also a matter of yards from the main entrance to the covered market, and close to the Grand Cinema. Finally, Mr Briffett included 41 Every Street, which, apart from 87 Scotland Road, was the only one of the comparables that was not in the principal town centre area. However, it was in a highly visible position with frontages on three sides at the junction of Every Street, Cross Street and North Street and overlooks a public car park.

25. Jude Street, on the other hand, whilst geographically within the town centre, was a short cul-de-sac in a backwater behind the cinema, behind the rear of the shops on the west side of Scotland Road and behind the covered market. Vehicular access was from Russell Street, to the north. It was accepted that this was not one of the main pedestrian through routes into or out of the town centre, and that the main public access for the market was off Cross Street

rather than from Jude Street. Apart from a bed shop and a carpet warehouse, there were no other shops in this part of the street, the other adjacent premises being used as a printing works. In my view, to derive a multiplier from a raft of comparables that were all unquestionably in better trading locations (even excluding, as Mr Briffett did, the highest and lowest), cannot possibly produce a figure that can be applied, without further adjustment, to the infinitely inferior subject premises. Indeed, as Mrs Barnes pointed out, the Zone A rate applied to the subject property was £40 in the 2005 Rating List, whereas apart from 41 Every Street and 15 Manchester Road which Mr Briffett had in any event excluded from the averaging process, all the others were between £70 and £100. That in itself speaks volumes about the comparability of the locations.

26. Mr Briffett referred to *Shun Fung*, and the fact that Mr Nazar would be unable to re-establish his business in an equivalent location for anything like the money that the council was offering. In my judgment, none of the comparables to which he referred could in any way be deemed equivalent, and the fact that no details were produced of transactions on properties or premises that were comparable is nothing to the point.

27. Finally, in respect of Mr Briffett's evidence, I do not find his alternative valuation on the basis of rental evidence persuasive. He assessed a rental value on the rental achieved for a shop at 5 Russell Street, which was, in my view, an infinitely preferable and more highly visible location. He also used a yield that had been achieved on much better premises at Every Street.

28. In my view, Mrs Barnes' evidence is in general to be preferred. She supplied details of a number of settlements that had been reached in connection with the scheme, and on that evidence alone, it is clear that a price of about £75,000 as claimed for the subject property would be wholly out of line with values in the area. I accept her view that, from an analysis of the open market sales, significant adjustments need to be made to reflect the poorer trading position. As to her investment valuation, I am satisfied that the property would have commanded a rental value of about £5,000 pa, but do not consider it to have been appropriate to make a deduction of 10 per cent as she had, as the comparables to which she referred, and the prevailing yields in the area, would not have included such a deduction. I do think that, on the basis of the reports that she produced, she adopted an appropriate yield (at 11%). Applying a multiplier, therefore, of 9.09 to the rental value of £5,000 pa gives a value of £45,450. This is, as it transpires, extremely close to the figure that Mr Briffett's methodology would have produced if he had used the 2005 Rateable Value on the subject property and, in my view, is a figure that, on the whole of the evidence, is the appropriate one to adopt.

29. On the question of whether or not the "second floor" should be included for the purposes of assessing value, I note that it had a poor means of access, and was fitted out as a bathroom that included wc facilities. I do not, therefore, consider that, whatever the state of the staircase leading to it, it could have been taken into account in calculating rental value as it could not effectively have been used for any other purposes. Indeed, Mr Briffett in his oral evidence appeared to attribute only £2.50 per week to it - £130 pa - which in capital value terms would only make a marginal difference of about £1,100.

30. Turning to the claim for disturbance, I am satisfied that there was no business in existence at the valuation date, and no claim for extinguishment has been made. No evidence was produced to support either the alleged loss on forced sale of stock, or in connection with the alleged costs incurred by the claimant in seeking alternative premises. The claim under Rule (6) therefore fails,

31. This decision disposes of the substantive issues in this case, and I determine compensation for the compulsory acquisition of the subject property in the sum of £45,450. The matter having been determined in accordance with the Simplified Procedure, and there being no exceptional circumstances to justify doing otherwise, I make no award as to costs.

DATED 30 August 2007

Signed

P R Francis FRICS