

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION - LIMITATION - compulsory purchase vesting date of 1 July 2014 - Notice of Reference received by the Tribunal at 5.08pm on 30 June 2020 - whether served within six year limitation period - whether Tribunal's Rule relevant - held Notice received in time

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	LAND AND ESTATE DEVELOPMENTS UK LIMITED	Claimant
	-and-	
	NOTTINGHAM CITY COUNCIL	Acquiring Authority

**Re: Land and buildings at
346 Southchurch Drive, Clifton, Notts
NG11 9FE**

Peter McCrea FRICS FCI Arb

Determination on written representations

Caroline Daly for the Claimant

Richard Moules for the Acquiring Authority

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Introduction

1.

This decision on a preliminary issue highlights the risks to claimants in compensation cases of making a notice of reference to the Tribunal at the last possible moment, six years after a vesting date.

Facts

2.

The claimant, Land and Estate Developments UK Limited, owned the long leasehold interest in land and buildings at Southchurch Drive, Clifton, in Nottingham. The property was affected by the Nottingham Express Transit System, and the claimant retained local surveyors FHP to act in its claim for compensation for temporary and then permanent acquisition by the acquiring authority, Nottingham City Council. The claim was substantial, at just over £1.3 million.

3.

On 30 June 2020, when most of the country was working from home during the Covid-19 lockdown, Mr Andrew Chapman MRICS of FHP, submitted a notice of reference to the Tribunal with supporting documents. Owing to their size, the notice and attachments were sent in four emails, the first of which was received in the Tribunal's email inbox at 5.08pm. In the final email, received at 5.31pm, Mr Chapman apologised for the fragmented nature of the reference, explaining that a dropping out of the VPN Line and lack of IT skills had frustrated him in serving the document in a more orderly manner. The footer to his firm's emails indicated that their office was closed, but that business was still fully functioning, with staff working remotely from home.

4.

The notice of reference indicated that temporary possession had been taken in parts, commencing on 10 May 2012, and the long leasehold interest was vested in the acquiring authority on 1 July 2014.

5.

The Tribunal acknowledged receipt on 3 July 2020, and on 9 July served a copy of the notice of reference and attachments upon the acquiring authority via its agent, Mr Andrew Prowse MRICS of Bruton Knowles. The Tribunal told Mr Prowse that the notice of reference had been received at 5.08pm on 30 June and invited his comments on the timing of the application, given the stated vesting date of 1 July 2014.

6.

In Mr Prowse's reply of 15 July 2020, he referred to the Limitation Act 1980, the Compulsory Purchase (Vesting Declarations) Act 1981, and Rule 12(1) of the Tribunal's Rules, and submitted that the latest time at which the claim for compensation could have been referred to the Tribunal was 5pm on 30 June. Given that the reference was made eight minutes after that time, Mr Prowse submitted that the reference was made out of time and should be struck out.

7.

On 22 July 2020, I made an order suspending the normal timetable for the submissions of statements of case on the substantive claim, and directed that the Tribunal would determine the acquiring authority's limitation defence as a preliminary issue. The parties subsequently agreed that I should determine the issue by written representations.

8.

For the claimant, I have received submissions from Ms Caroline Daly, and for the acquiring authority from Mr Richard Moules. I am grateful to them both.

Statutory Provisions and the Tribunal's Rules

9.

The acquiring authority's power to make the compulsory acquisition of the reference land arises from the Nottingham Express Transit Order 2009 ('the Order'), Article 31(1) of which applies the Compulsory Purchase (Vesting Declarations) Act 1981 ('the 1981 Act') as if the Order were a compulsory purchase order.

10.

Section 10(3) of the 1981 Act identifies the limitation period applicable where land is acquired under a general vesting declaration:

"(3) The time within which a question of disputed compensation arising out of an acquisition of an interest in land in respect of which a notice to treat is deemed to have been served by virtue of Part III

of this Act may be referred to the Upper Tribunal shall be 6 years from the date at which the person claiming compensation, or a person under whom he derives title, first knew, or could reasonably be expected to have known, of the vesting of the interest by virtue of Part III of this Act. This subsection shall be construed as one with Part I of the Limitation Act 1980.”

11.

The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 apply to proceedings in the Tribunal. The overriding objective of the Rules is to deal with cases fairly and justly, and the Tribunal must seek to give effect to the overriding objective when exercising any power or interpreting any rule or practice direction (Rule 2(3)).

12.

Rule 12(1) provides that: “An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day”.

13.

Rule 28 concerns notices of reference and applies to claims for compensation brought under the 1981 Act. Rule 28(1) provides that: “Proceedings to which this Part applies must be started by way of reference made by sending or delivering to the Tribunal a notice of reference.” While Rule 28(6) prevents a notice of reference being sent or delivered to the Tribunal earlier than one month after the date of service or deemed service of a notice to treat, and Rule 28(7) provides that in other specific types of reference the notice of reference must be received by the Tribunal within one month of various events, the Rules are not concerned with the six-year limitation period. The limitation period is part of the general law, prescribed by statute, rather than being a matter of tribunal procedure.

14.

It is also relevant to refer to the Chamber President’s guidance on the conduct of proceedings in the Lands Chamber during the Covid-19 pandemic, issued on 24 March 2020, which was in force at the relevant time and included the following in relation to the receipt of documents by the Tribunal:

“7. In addition to post, fax and other hard copy methods of delivery, any document to be provided to the Tribunal under the Rules may be sent by such method as the Tribunal may permit or direct (rule 13(1)). E-mail is a permitted method of delivering documents to the Tribunal, and is the preferred means of communication for all purposes. Any document which is required to be delivered to the Tribunal may be delivered by e-mail to lands@justice.gov.uk and will be treated as having been delivered at the time it is recorded as having been received in the Tribunal’s inbox.”

Submissions

15.

I can summarise the parties’ submissions quite briefly.

16.

In short, Ms Daly submitted that the notice of reference was received by the Tribunal within time. The day on which the cause of action accrued is to be disregarded in calculating the running of time, and since the cause of action was the vesting of the long leasehold interest in the acquiring authority on 1 July 2014, the six-year clock started running on 2 July. Hence a reference to the Tribunal on 1 July 2020 was within time. Alternatively, if that were wrong, the reference was submitted only eight minutes late and, relying on the principles set out in *Denton v T H White Ltd* [2014] 1 WLR 3926, applied by the Tribunal in *Simpsons Malt Ltd v Jones (VO)* [2017] UKUT 0460 (LC), Ms Daly submitted

that the delay was neither serious nor significant; Mr Chapman had explained the reasons behind the delay, and having regard to the overriding objective it would be disproportionate to strike out the Claimant's reference on the basis of an eight minute delay.

17.

For the acquiring authority, Mr Moules submitted that there is a clear line of authority that where the cause of action accrues at the very first moment in a day, that day is included for limitation purposes. The land vested in the acquiring authority at midnight on 1 July 2014, hence the final day of the limitation period was 30 June 2020. The claim was out of time because it was not made by 5pm on 30 June in accordance with Rule 12(1). Mr Moules made further submissions concerning the history of the negotiations between the parties, but I need not recount them.

Discussion and conclusions

18.

In my judgment the disputed claim for compensation was referred to the Tribunal within six years of the date on which the land was vested in the acquiring authority and was in time.

19.

I accept Mr Moules' submission that the first full day on which time began to run was 1 July 2014. The land was vested in the acquiring authority throughout the whole of that day, and the claimant was not the owner of it for any part of the day. There is therefore no reason why time should not have started to run on that day. It follows that time expired on 30 June 2020, and not on 1 July 2020 as Ms Daly submitted.

20.

Nor do I accept Ms Daly's alternative argument that the Tribunal should extend time in the circumstances of this case. If the question of compensation was referred to the Tribunal after the expiry of the limitation period laid down by Parliament in section 10(3) of the 1981 Act it is not within the Tribunal's power to resort to its own procedural Rules to extend that period.

21.

But, for the same reason, the Tribunal's procedural Rules cannot be used to truncate the period of six years which Parliament has allowed for the referral of disputed claims for compensation. The critical issue is whether the question of disputed compensation was "referred to the Upper Tribunal" within the permitted six years.

22.

Section 10(3) of the 1981 Act speaks of a claim being "referred" to the Tribunal, and rule 28(1) states that a claim is started by "sending or delivering" a notice of reference. These are unilateral acts, none of which requires the active participation of the Tribunal or its staff, and there is therefore no reason why they may not be done at a time when the Tribunal's administrative offices are closed to the public.

23.

Rule 12(1) imposes a 5pm deadline on any act which is required to be done by the Rules, a practice direction or a direction. There is no practice direction or direction relevant here, and as I indicated above, there is no specific Rule regarding the six-year limitation period. Rule 28(1) does require that compensation proceedings "must be started by way of reference made by sending or delivering to the Tribunal a notice of reference" but it sets no time limit on the doing of that act "on or by a particular

day” which could engage rule 12(1). The Tribunal’s Rules cannot, and do not, seek to override 1981 Act, which itself does not prescribe a 5pm rule.

24.

The acquiring authority accepts that if the 5pm deadline is inapplicable, the notice of reference was delivered on 30 June 2020 - within the six-year limitation period. The Chamber President’s Guidance made specific provision for the service of documents by email, and states that they will be treated as being received at the time they are recorded as having been received in the Tribunal’s inbox. The Guidance could not change the Tribunal’s Rules or Practice Directions and did not purport to do so. It provided clarity and reassurance, in the circumstances of the pandemic, that documents delivered by email would be treated as having been received when they arrived in the Tribunal’s inbox. That guidance is consistent with the claimant’s case that he referred his claim to the Tribunal on 30 June, and that it was referred within time.

25.

Accordingly, I find that the notice of reference was received before the expiry of the six-year limitation period at midnight on 30 June 2020 and is valid.

26.

I must, however, reiterate my comments in opening. This case provides a salutary warning to parties leaving the submission of notices of reference or other types of appeal to the last possible moment.

Peter McCrea FRICS FCI Arb

24 March 2021