BNO/205/2006

LANDS TRIBUNAL ACT 1949

BLIGHT NOTICE – preliminary issue – house – whether claimant company has a qualifying interest – meaning of owner-occupier – counter-notice of respondent upheld - Town and Country Planning Act 1990 section 168

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN **AARDVARK SRE LIMITED** **Claimant**

and

SEDGEFIELD BOROUGH COUNCIL **Respondent**

Re: 31 Ford Terrace
Chilton
County Durham
DL17 0JG

Determination on the basis of written representations under Rule 27 of the Lands Tribunal Rules 1996 (as amended)

A J Trott FRICS

The following cases are referred to in this decision:

Minister of Transport v Holland (1963) 14 P & CR 259
Liverpool Corporation v Chorley Union [1913] AC 197
Arbuckle Smith & Co Limited v Greenock Corporation [1960] 1 All ER 568
Westminster City Council v Southern Railway Company and Others [1936] AC 511

DECISION ON A PRELIMINARY ISSUE

Introduction

1. Aardvark SRE Ltd (the claimant) owns the freehold interest in a terraced house at 31 Ford Terrace, Chilton, County Durham, DL17 OJG (the property). On 1 October 2006 the claimant served a blight notice on Sedgefield Borough Council (the respondent) under section 150 of the Town and Country Planning Act 1990 (the Act). The respondent served a counter-notice on 28 November 2006 objecting to the blight notice on the grounds contained in section 151(4) subsections (a), (b), (f) and (g) of the Act. The claimant referred the objection to this Tribunal on 3 December 2006.

2. The claimant made an interlocutory application to the Tribunal on 26 November 2007 seeking the disclosure from the respondent of a substantial amount of information. The respondent objected to the application on 12 December 2007. The Tribunal wrote to the parties on 21 December 2007 and suggested that the respondent's ground of objection under section 151(4)(f) of the Act could usefully be determined as a preliminary issue. That ground did not involve the information that formed the subject of the interlocutory application. If the preliminary issue was decided in the respondent's favour then that would dispose of the reference so that no further costs would be incurred. However, if it was decided in the claimant's favour the application for disclosure would then be determined. The parties agreed to this proposal and applied for the objection under ground 151(4)(f) of the Act to be heard as a preliminary issue by way of written representations.

Facts

3. The claimant purchased the freehold interest in the property in November 2005. In a letter to the respondent dated 27 July 2006, a copy of which was attached to the reference to the Tribunal, the claimant stated that its intention was to refurbish the house and then to hold it for 3 to 5 years (or until its capital value had increased to £90,000) as an investment property generating income from residential tenants. The claimant paid £37,500 (plus legal and search fees) for the freehold interest and then spent a further £10,000 in renovating the property. The renovations comprised a damp proof course, rewiring, installation of a new condensing boiler, re-plastering throughout, a new UPVC front door and bathroom window, a new bathroom suite and décor, a new kitchen and appliances, redecoration and new carpets throughout. Mr John Morley, a director of the claimant company, spent approximately 400 hours of his own time working on the project. The property was let from 17 June 2006 until 9 August 2006 according to the respondent's Council Tax records. It then remained vacant until the blight notice was served.

Statutory Provisions

4. Section 151(4) of the Act states:

> "Subject to the following provisions of this Act, the grounds on which objection may be made in a counter-notice to a notice served under section 150 are –
>
> ...
>
> (f) that (for reasons specified in the counter-notice) the interest of the claimant is not a qualifying interest"

5. A qualifying interest is defined in section 149 of the Act:

> "(2) Subject to the provisions of sections 161 and 162, an interest qualifies for protection under this Chapter if –
>
> (a) it is an interest in a hereditament or part of a hereditament and on the relevant date it satisfies one of the conditions mentioned in subsection (3); or
>
> (b) ....
>
> and in this Chapter such an interest is referred to as "a qualifying interest".
>
> (3) The conditions mentioned in subsection (2)(a) are –
>
> (a) that the annual value of the hereditament does not exceed such amount as may be prescribed for the purposes of this paragraph by an order made by the Secretary of State, and the interest is the interest of an owner-occupier of the hereditament; or
>
> (b) that the interest is the interest of a resident owner-occupier of the hereditament.
>
> (4) In this section "the relevant date" in relation to an interest, means the date of service of a notice under section 150 in respect of it."

6. Section 161 deals with the powers of personal representatives in respect of a blight notice and section 162 deals with the power of mortgagees to serve a blight notice.

7. "Hereditament" means a relevant hereditament within the meaning of section 64(4)(a) to (c) of the Local Government Finance Act 1988:

> "64(4) A hereditament is a relevant hereditament if it consists of property of any of the following descriptions –
>
> (a) lands;
>
> (b) ....
>
> (c) ...."

8. Section 171(1) of the Act defines "annual value" as –

> "(a) ...
>
> (b) ...
>
> (c) in the case of any other hereditament [other than a hereditament shown in a local non-domestic rating list either none or part of which consists of domestic property] the value attributable to that hereditament in accordance with subsections (2) and (3)".

Section 171(2) of the Act states:

> "The value attributable to a hereditament, or the non-rateable part of it, in respect of domestic property shall be the value certified by the relevant valuation officer as being 5 per cent of the compensation which would be payable in respect of the value of that property if it were purchased compulsorily under statute with vacant possession and the compensation payable were calculated in accordance with part II of the Land Compensation Act 1961 by reference to the relevant date."

9. The meaning of "owner-occupier" and "resident owner-occupier" is defined in section 168 of the Act:

> "(1) Subject to the following provisions of this section, in this Chapter "owner-occupier", in relation to a hereditament means –
>
> (a) a person who occupies the whole or a substantial part of the hereditament in right of an owner's interest in it, and has so occupied the hereditament or that part of it during the whole of the period of six months ending with the date of service; or
>
> (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, a person who so occupied the hereditament or, as the case may be, that part of it during the whole of a period of six months ending immediately before the period when it was not occupied.
>
> (2) ....
>
> (3) In this chapter "resident owner-occupier", in relation to a hereditament, means –
>
> (a) an individual who occupies the whole or a substantial part of the hereditament as a private dwelling in right of an owner's interest in it, and has so occupied the hereditament or, as the case may be, that part during the whole of the period of six months ending with the date of service; or
>
> (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, an individual who so occupied the hereditament or, as the case may be, that part during the whole of a period of six months ending immediately before the period when it was not occupied.

The case for the claimant

10. The claimant submitted that the determination of whether it was an owner-occupier must be based solely upon the definition provided in section 168 of the Act. Section 168(1) required either subsection (a) or (b) to be satisfied. The claimant was only concerned with subsection (a) and said that subsection (b) was not relevant to its case. As a limited company the claimant satisfied the definition of a person for the purposes of section 168(1). It had owned the freehold interest in the property since November 2005, and had held it for a period substantially greater than 6 months by the time it served the blight notice on 1 October 2006.

11. The only question left to answer was whether it occupied the hereditament in right of an owner's interest in it. The claimant distinguished the requirements of sections 168(1)(a) and 168(3)(a) of the Act. The latter defined a category of resident owner-occupiers and was applicable to where someone physically lived in the property and occupied it as a private dwelling. Section 168(1)(a) had no such requirement for a physical presence, only for occupation by right of ownership. The respondent had never disputed the fact of the claimant's freehold ownership but appeared to consider that an occupier must also be a resident. Indeed the respondent appeared to believe that the two words were synonymous. If that were so then there would be no need to have the two categories of "owner-occupier" and "resident owner-occupier". The claimant had an owner's interest and had the rights associated with such an interest. Therefore it occupied the hereditament in right of that owner's interest. Section 168(1)(a) did not refer to residence because it was not required.

12. The definition of the word "occupy" contained in the *Chambers English Dictionary* was "to have possession of or live in (a house, etc)". Thus occupation may be through possession of a property. Possession did not require residence but it did confer occupation. The claimant contended that the respondent's case was based upon its failure to understand the meaning of the word "occupy".

13. Section 162 of the Act gave power to mortgagees to serve a blight notice. This showed that companies were so entitled. The provision was necessary because otherwise a mortgagee, being neither an owner nor a resident, could not serve a notice under section 168. However, the proposition that an owner of a property did not have the same right as a mortgagee to serve a blight notice was ludicrous. As an owner-occupier the claimant was entitled to serve a blight notice and the respondent's objection under ground 151(4)(f) was not well founded.

The case for the respondent

14. The respondent submitted that the claimant could only serve a blight notice if it had a qualifying interest under section 149(2) of the Act. That required the claimant to show that it had the interest of either an "owner-occupier" or a "resident owner-occupier" as defined in section 168 of the Act. The various definitions all required the claimant to have been in actual occupation of the land for a specified period of time. The respondent accepted that the claimant owned the freehold of the property and therefore had an owner's interest. But the claimant had

not occupied the property during any relevant period and so did not hold the interest of an owner-occupier.

15. The respondent's Council Tax records showed that save for a period when tenants were in occupation between 17 June 2006 and 9 August 2006, the property was vacant between the date when the claimant purchased the property in November 2005 and the date of the blight notice on 1 October 2006. The claimant did not actually occupy the property at any time and had not sought to allege that it had. Instead it had contended that it was an owner-occupier by virtue of its ownership of the freehold interest in the property. But that was insufficient to qualify as an owner-occupier. If this were not so then the definition of a qualifying interest would merely require the claimant to be the owner and not the owner-occupier of the property. But the Act required a claimant to be in actual occupation over a specified period of time in order to qualify for protection under the blight provisions. The claimant did not so qualify and therefore the respondent's objection under section 151(4)(f) should be upheld.

Conclusions

16. The blight notice states that the claimant has a qualifying interest in the property by virtue of section 149(3)(a) of the Act. In its counter-notice the respondent objects to this for the reason that the claimant does not fall within the provisions of section 168(1) of the Act. The dispute is therefore about whether the claimant has the interest of an owner-occupier in the property. The claimant does not argue that it has the interest of a resident owner-occupier.

17. In my opinion it is possible for a company to be an owner-occupier of a dwelling by virtue of section 149(3)(a) and sections 171(1)(c) and 171(2) of the Act. Although neither party gave any evidence about whether section 171(2) applies in this reference they have proceeded as though it does and have focused their arguments upon whether the claimant satisfies the definition of an owner-occupier set out in section 168(1) of the Act. There is no dispute that the claimant has an owner's interest in the property and therefore the only issue to be determined is whether the claimant occupied the property for either of the qualifying periods defined in section 168(1)(a) and (b) of the Act.

18. The Act does not define an "occupier". In *Minister of Transport v Holland* (1963) 14 P & CR 259 at 265 Pearson LJ said of the equivalent provisions in section 43 of the Town and Country Planning Act 1959 that:

> "So far as the word 'occupation' is concerned, it has been pointed out that the Act itself makes reference to rating provisions and therefore it is reasonable to infer that the word 'occupation' in this Act may have the same meaning as in Acts concerned with rating matters. It can also be put in this way: the word 'occupation' or 'occupies' is used in the rating statutes without special definition and here also is the word 'occupation' or 'occupies' used without special definition. It is reasonable, therefore, to see how those words have been interpreted where they occur in the rating statutes and to apply the interpretation so derived to the interpretation of the same words in this statute."

19. I have therefore considered the issue of occupation by reference to relevant rating cases. In *Liverpool Corporation v Chorley Union* [1913] AC 197 Lord Atkinson stated at 211:

> "When the statute, therefore, enacts that the occupier of a house should be rated, it must mean that the person to be rated shall occupy the house *as a house*; that is, that he shall use the house for the purpose of living in it, storing other chattels in it, or using it for some such other purpose as houses may reasonably be devoted to; and that, as a vacant house is not used for any of these purposes, it is not occupied *as a house* within the meaning of the statute."

20. The claimant accepts that it did not actually occupy the property. It undertook refurbishment works before letting out the premises between June and August 2006. I do not consider that these works of refurbishment constituted occupation of the property by the claimant. In the Scottish case of *Arbuckle Smith & Co Limited v Greenock Corporation* [1960] 1 All ER 568 Viscount Kilmuir, LC said at 570:

> "Yet activity carried on in relation to premises, the sole object of which is to make the premises fit for the only use which is contemplated, does not amount to the kind of actual user as is essential to rateable occupation. So long as the activities were confined to making the premises fit for a contemplated purpose, the premises were not serving the appellants' purposes as warehousemen. The premises were not being applied to the purposes for which they existed but were in an antecedent stage... If, therefore, there is no use of premises according to their nature, I find it difficult to see how there is occupation attracting liability for rates ....
>
> ... I cannot, myself, accept the view that, when a person is repairing or altering something designed for a particular purpose, he is by that action making use of it."

Lord Reid said at 572:

> "And I think that it would accord with the ordinary use of language to say that the owner who in someway enjoys the accommodation is occupying the premises, but that the owner who merely maintains, repairs or improves his premises is not thereby occupying them; he is preparing for future occupation by himself, his tenant or his disponee."

21. Even if the period during which the refurbishment works were carried out by the claimant was properly considered to be a period of occupation in right of an owner's interest, the requirements of section 168(1)(a) or (b) would still not be satisfied. The property was let to a third party from mid June to early August 2006. Therefore the claimant did not occupy the hereditament during the whole of the period of six months ending with the date of service of the blight notice (subsection (a)). The property was apparently unoccupied from when the tenant vacated on 9 August 2006 until the blight notice was served on 1 October 2006. Therefore subsection (b) cannot apply since the claimant did not occupy the property during the whole of a period of six months ending immediately before the period when it was not occupied. For two of those six months the property was occupied by the claimant's tenant.

22. The claimant asserts that it occupies the property solely by virtue of its freehold ownership of it. In doing so it relies upon a constructive de jure occupation that results from the mere ownership of land. I do not accept this argument. Occupation must be actual occupation. In *Westminster City Council v Southern Railway Company and Others* [1936] AC 511 Lord Russell of Killowen said at 529:

> "Occupation, however, is not synonymous with legal possession: the owner of an empty house has the legal possession, but he is not in rateable occupation."

The claimant's legal possession of the property does not of itself constitute de facto occupation of it.

23. Section 162 of the Act has no bearing on the facts of this reference. It deals with the power of a mortgagee in possession to serve a blight notice and is not applicable to the claimant.

24. I conclude that the claimant does not have a qualifying interest under section 149(2) of the Act and I uphold the respondent's objection under section 151(4)(f). The blight notice is not valid and this decision on the preliminary issue shall determine the reference. A letter on costs accompanies this decision, which will become final when the question of costs has been determined.

Dated 5 February 2008

A J Trott FRICS