LCA/258/2007

LANDS TRIBUNAL ACT 1949

COMPENSATION – water – pasture land with outline planning consent for cycling activities centre – laying of water main close to site boundary – effect on value – whether additional value attaching to planning permission – compensation awarded £2,300 – Water Industry Act, 1991, Schedule 21.

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN **A.L.E.R.T. ACTIVITIES LIMITED** **Claimant**

and

DWR CYMRU **Compensating Authority**

Re: Penrhos Farm
Penrhos
Ystradgynlais
Powys

Before: N J Rose FRICS

Sitting at Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET on 8 December 2008

Mr James Thomas Moore, with permission of the Tribunal, for the claimant
Robert Kirk, instructed by Hughes Griffiths Partnership, solicitors of Swansea, for the Compensating Authority.

The following cases, although not referred to in this decision, were cited:

Viscount Camrose and another v Basingtoke Corporation [1966] 3 All ER 161
Bestley and others v North West Water Ltd [1998] 1 EGLR 187

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DECISION

1. This is a reference to determine the compensation payable to the claimant, A.L.E.R.T. Activities Limited, for the depreciation in value and loss or damage sustained as a result of the carrying out of pipe-laying works on freehold pasture land known as Penrhos Farm, Penrhos, Ystradgynlais, Powys, by the compensating authority, Dwr Cymru. Notice of entry was served on 10 June 2003, which is the valuation date.

2. Mr James Moore appeared for the claimant with permission of the Tribunal. He called, as expert witness, Mr M J Dawson FRICS, a partner in Messrs Dawsons of Swansea. Mr Robert Kirk of counsel appeared for the compensating authority. He called one expert witness, Mr Philip Meade, MRICS, MEWI, a partner in Messrs DavisMeade of Oswestry and one factual witness, Mr Stephen John Baker, a construction manager with the compensating authority's contractors, Laing O'Rourke. Before me the total compensation claimed was £12,700 and the compensating authority suggested a figure of £2,300.

3. In the light of the evidence I find the following facts. Penrhos Farm adjoins the northern boundary of Penrhos, which forms part of the larger settlement of Ystradgynlais in the Upper Swansea Valley. The site is located approximately 16 miles from Swansea, 12 miles from Neath, 25 miles from Brecon and 14 miles from junction 45 of the M14 motorway. The claimant's holding extends to approximately 8 hectares (19.8 acres), predominantly used for grazing purposes on a casual basis. The land consists of scrub, general grazing pasture and mature woodland. It slopes gently in a westerly direction towards Brecon Road, from which access is gained.

4. On 26 January 2002 Powys County Council granted outline planning consent to the claimant for the following development of the reference site:

> "Landscaping, footpaths, new access, roadway and four new buildings to provide National Cycling Activities Centre on Sustrans Route 43."

5. On 10 June 2003 the compensating authority served a formal notice of entry in respect of a strip of land approximately 270m long, running along the sudden boundary of the site. The accompanying notes included the following paragraph:

> "A strip of land up to a maximum of 25 metres wide will be required along the length of the pipeline in order to facilitate construction and access for these works. Future inspection and works of repair, renewal, alternation, as well as to ensure that no future building construction or other works interfere with the Company's rights under the Water Act 1991 will necessitate a protected width of 6 metres. All persons who in future intend to erect any building or carry out any works (other than normal surface cultivation) in the vicinity of the pipeline are advised before doing so to consult Dwr Cymru."

6. On or about 12 December 2003 the claimant discovered that the compensating authority had commenced operations on the site without notice, despite a request for a meeting to discuss the proposals having been made by Mr Dawson in a letter dated 23 June 2003. The compensating authority's contractors provided a Method Statement on 17 December 2003 and on the following day a site meeting took place between representatives of the claimant and Mr Thomas of Rees Richards and Partners, the valuers acting at the time for the compensating authority. It was then apparent that the pipeline had been laid too far from the boundary for a length of approximately 150m. Pipelaying work then stopped until July 2004, when it re-commenced, this time on a route which followed the southern boundary of the land as closely as possible. The work was completed by 6 August 2004.

7. On 19 July 2006 Mr Dawson wrote to Mr Thomas, setting out details of the amount of compensation claimed. He said:

> "As a result of the laying of the water main, all of the buildings comprised within the original scheme have had to be moved by a distance of approximately 16 metres. This has resulted in a loss of developable area of 0.92 acres. Part of this area will however be incorporated into the car park and it may well be that our clients will be able to hard surface this area notwithstanding that the water main runs underneath this area. Clarification will be required from you on this point.
>
> On the basis that their land is worth something in the region of £60,000 to £65,000 per acre, we calculate that our clients' loss lay in the region of £40,000 representing a loss of approximately two-thirds of an acre."

8. In addition to the claim for diminution in value, Mr Dawson claimed compensation for disturbance (£1,500), residual damage (£500) and fees for a new planning application and re-designing the scheme (£5,000).

9. Mr Thomas replied on 4 August 2006. He offered £500 for disturbance and £200 for residual damage. As for diminution in value, he said

> "The length of the water main is 270 metres and the easement width is 6m. This equates to an area of 0.162 ha or 0.4 acres. Utilising the generally accepted formula of 50% diminution of value to the affected land at £60,000 per acre will produce a compensatable sum of £12.000."

10. The claimant did not consider this offer to be acceptable. The compensating authority's solicitor later discovered that the plan which had been provided by the claimant, via Mr Dawson, showing various buildings to be constructed above the route of the pipeline had, contrary to the claimant's suggestion, not formed part of the outline planning permission. In fact, the plan which was before the local planning authority when it decided to grant consent showed that the pipeline would run through an area proposed for car parking.

11. At the hearing Mr Dawson spoke to a total claim of £12,700, calculated as follows:

A	Disturbance	£1,500
B	Residual damage	£1,000
C	Diminution in value	£10,200
		£12,700

12. Mr Dawson's justification for these figures was as follows:

> "A. As regards disturbance this case has been protracted through no fault of my clients, it has involved them in considerable inconvenience and frustration and the figure claimed is considered to be fair and reasonable as a result. It is also in line with other settlements that had been agreed between my firm and Dwr Cymru's agents and valuers. Disturbance needs to reflect occupation for two and a half years.
>
> B. As regards the residual damage, I accept that from the original Schedule of Condition it can be seen generally the area was in use as rough grazing land. It has to be remembered however that we are of the opinion that the reinstatement works undertaken by Dwr Cymru's contractors is inadequate as evidenced by the flooding that has occurred. Whilst I understand that Dwr Cymru would be involved as third party claimants in the event of any claim ever being made by neighbours in respect of flooding, this nevertheless is a relatively nominal sum to reflect and recognise the problems that have been encountered. In addition, the access point from my client's land to the highway is incomplete.
>
> C. I am firmly of the opinion that in the minds of any purchaser, the restriction as a result of the sterilisation of an area of land would impact on their thinking. A capital value per acre has been agreed in principle between the respective valuers and the amount being claimed represents 25% of that value which is in my opinion more than fair."

13. In addition Mr Dawson sought "normal agent's fees for negotiating such a claim". The reference to agreement in principle to a value per acre was to the £60,000 mentioned by Mr Thomas in his letter dated 4 August 2006.

14. Mr Meade assessed the total compensation at £2,300, comprising £1,000 for disturbance, £500 for residual damage and £800 for depreciation in value. On disturbance he said this:

> "I understand from the correspondence and documents I have seen ... and in particular a note dated 1 January 2003 that the claimant was not in physical occupation of the land, but was in fact renting it out for grazing for '£40 to £50 per month'.
>
> I have not seen anything in the documents I have to suggest that the tenant was in any way disturbed or refused to pay her rent.

> The claimant did however clearly suffer some disturbance in as much that it spent time dealing with the compulsory acquisition. This, in my experience, means it would be entitled to make a claim for its reasonable time spent dealing with Dwr Cymru, their agent and solicitor and also monitoring the scheme and overseeing the reinstatement. They have not broken down their claim for £1,500, and in my view, for a scheme of this size, I would not expect to get as much under the disturbance head of claim.
>
> I have to consider, however, that the land is owned by a limited company, and hence dealing with compulsory purchase (from a claimant's point of view) is going to be more time consuming than dealing as an individual. Nonetheless, I would not expect to get more than £1,000 under this head of claim especially as they were not in physical occupation.
>
> There is also the question of flooding caused to the neighbouring property, although as I am not a drainage expert, I can only base my opinion on the evidence found by Dwr Cymru (unless the claimant can show evidence to the contrary) and hence I have not included anything in either the disturbance or depreciation figures for this. Clearly if there was evidence to prove to the contrary, an allowance would have to be made (preferably under the disturbance head of claim) for rectifying the problem if it were shown to exist."

15. Mr Meade said that, in his opinion, residual damage was the same as diminution in value. Assuming, however, that there was a requirement for some accommodation works such as repairing fences, spot spray weeding and stone picking, he considered that a payment of £500 would constitute reasonable compensation.

16. Mr Meade added that the claim for diminution in value assumed that the proposed location of the National Cycle Centre buildings would have to be moved. It was clear from the plan accompanying the outline planning consent, however, that the proposed buildings were in fact to be sited well away from the route of the water main and the protected width crossed an area which had been intended to be used as a car park. Moreover, documents disclosed by the claimant showed that, by the valuation date, the cycle centre project was not considered to be viable.

17. In Mr Meade's opinion, any value in excess of purely agricultural value that was attributable to the extant planning permission would have been very limited. Based on his general experience, but without reference to any particular comparables, the site with the benefit of outline planning permission would have achieved between £120,000 and £160,000 if sold on the open market. This value reflected the fact that the existence of planning permission for a leisure activity (albeit one that was not economically viable) meant that the chances of an alternative leisure use being approved were greater than on normal agricultural land. He thought, however, that the presence of the pipeline would have had only a nominal effect on value. Its position, close to the boundary of the site and away from the access road, meant that it would make little or no difference to the practical implementation of the existing consent. Furthermore, as Mr Dawson had himself pointed out in a letter to the claimant dated 29

November 2004, any hope value would be likely to be restricted to the western sector of the site, which enjoyed road frontage. The effect on value of the pipeline, running close to the southern boundary, would therefore be negligible.

18. Mr Meade considered that the agricultural value of the reference land was in the region of £4,000 per acre, and the hope value for some form of leisure use would add another £4,000 per acre. The custom and practice of the compensating authority, well known in the valuation profession, was to pay 50% of the agricultural value of the land as compensation for depreciation in value, where a higher amount could not be substantiated. This approach recognised the existence of the water main and the compensating authority's rights over it, which would result in a restriction of activities which might damage the main over a width which was usually at least 6 metres. He was aware of no precedent for applying this custom and practice to non-agricultural values.

19. Mr Meade calculated the area of the strip in question as being approximately 0.4 acres. This would be worth £1,600 in terms of agricultural value and indicated a compensation payment, based on 50% of value, of £800.

20. I start by considering the value of the claimant's property with the benefit of the outline planning consent dated 26 January 2002. Mr Dawson assessed this value at £60,000 per acre, based on the figure provisionally agreed with Mr Thomas in July 2006. That value was arrived at on the understanding that the site was intended to be developed to form a National Cycling Activities Centre. In fact, the claimant had intended to operate the centre in conjunction with adjoining land belonging to Celtic Energy Ltd. On 26 September 2002 that company informed the claimant that "the areas of land in which you have expressed an interest are not available to be sold at present. We anticipate having operational requirements in some areas and in other places we have obligations to the commoners and development ideas of our own etc. If this situation were to change and we were to put any of this land on the market, you may be assured that our Estate Managers will let you know."

21. In a letter dated 15 December 2002 addressed to the Economic Development Officer of Brecknock Borough Council, the claimant's secretary said in relation to the proposed cycling activities centre:

> "Unfortunately the project is no longer considered viable, due to the more advanced development of a similar project at Afan Argoed near Port Talbot."

22. The cycling activities centre had not made any further progress by the time Mr Dawson and Mr Rees discussed its site value in 1996. In answer to a question from me, Mr Dawson said that he would not have put the value at £60,000 per acre if he had known that the cycling centre was not viable. He suspected that the value might have been in the region of £18,000 to 20,000 per acre. It was difficult to say. A lot would depend upon what would be revealed by investigations into potential alternative leisure uses.

23. This tentative estimate of potential site value for leisure use by Mr Dawson compares with that of £6,000 to £8,000 per acre suggested by Mr Meade. I suspect that Mr Meade's estimate is more reliable. It is not necessary for me to determine the point, however. The claimant's site extends to nearly 20 acres. I am satisfied that any leisure use which might prove to be viable upon it is unlikely to be materially affected by restrictions on construction, limited to a narrow strip of land close to one boundary and some distance from any likely access point. In those circumstances any effect on hope value above basic agricultural value would be negligible.

24. Mr Meade considered that the agricultural value of the claimant's land was £4,000 per acre and Mr Dawson's valuation was between £4,000 and £6,000. No comparable evidence was produced, but Mr Meade seemed to me to be a more objective witness. I accept his evidence. I find that the agricultural value was £4,000 per acre and that this was reduced by 50 per cent along the protected width of 6 metres. Mr Meade calculated the protected area to be 0.4 acres. Mr Dawson used an area of 0.68 acres, based on the assumption that the pipeline was still in the wrong position for 150m of its length. In the light of Mr Baker's unchallenged evidence it is clear that Mr Dawson's assumption was incorrect. I accept Mr Meade's figure of £800 for diminution in value. I also prefer Mr Meade's evidence on disturbance and the cost of any necessary accommodation works to that of Mr Dawson.

25. The claim for "normal agent's fees" for negotiations (as opposed to costs incurred in this reference) was not challenged. It was not quantified, however. In the absence of any details of the time spent by Mr Dawson in negotiations or the appropriate hourly rate, I award a surveyor's fee based on the appropriate Ryde's scale prior to its abolition.

26. I would add that Mr Moore criticised the compensating authority for changing valuers and reneging on the level of compensation suggested by Mr Thomas in 2006. I reject that criticism. The fact is that the claimant provided the compensating authority with misleading information, both as to the plan which had been approved by the planners and as to its own intention not to proceed with the cycling centre project. Had it not been for the efforts of its solicitor, the authority would probably not have discovered the true position. Having done so, it was entitled to provide the available information to a different valuer and ask him to approach the valuation exercise afresh.

27. The compensating authority will pay the claimant compensation of £2,300 plus surveyor's fee on Ryde's scale. A letter requesting representations on costs accompanies this decision, which will become final when the question of costs has been determined.

Dated 26 January 2009

N J Rose FRICS