Landmark CHAMBERS

JS Bloor (Wilmslow) Ltd v Homes and Communities Agency [2017] UKSC 12: the statutory planning assumptions and the no scheme world

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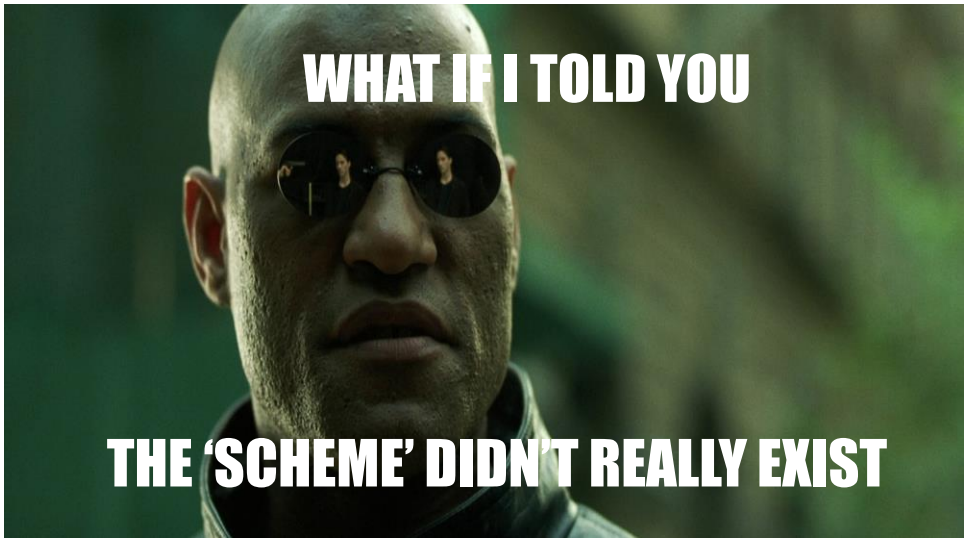

The background to the dispute: Kingsway Business Park, Rochdale

- In May 2002, North West Development Agency made the NWDA Kingsway Business Park, Rochdale CPO for purposes of securing 420 acres (170 ha) of land at Milnrow, Rochdale in connect with construction of Kingsway Business Park
- 3.6 million sq ft B1 commercial and business accommodation; 300 residential units; 15,000 sq ft A1 retail; 9,000 sq ft A3 retail; hotel, public realm, infrastructure and public open space
- KBP site had been allocated in the local development plans continuously from 1989
- **Policy EC/6** of the 1999 Unitary Development Plan provided that any individual development within KBP site must be compatible with overall objective of strategic business park development

The dispute: Valuation of Plots 13 and 14

- Claimants were owners of two parcels of former grazing land of approx. 27 acres (10.86 ha) ("Plots 13 and 14"/"the reference land")
- Parts of Plots 13 and 14 were within Plot X in KBP scheme, designated for residential development; other parts within KBP scheme plots designated for B1 office and floor space
- CPO confirmed on 5 October 2004 and GVD in relation to Plots 13 and 14 made on 4 January 2006
  - Homes and Communities Agency (took over NWDA rights and liabilities in 2011) valued land as poor quality grazing land at £2,000 per acre (approx. **£54,000**)
  - Claimants sought: **£2,593,000** citing hope value based on prospect of permission for residential development

- Previous owners had applied for planning permission for residential development on the reference land but this had been refused on basis of being contrary to Policy EC/6;
- An application for a certificate of appropriate alternative development under s. 17(4) of Land Compensation Act 1961 that planning permission might have been expected to be granted for (amongst other things) residential development if the land had not been made subject to CPO; application withdrawn following indication that it too would be refused on same basis;

The issue of principle

The underlying issue of principle: what was the relationship between two assumptions that were required to be made as part of the valuation process:

(i) **The cancellation assumption**: when assessing what grants of planning permissions should be taken to be attached to the land to be valued, the scheme for which the land is proposed to be acquired, together with the underlying proposal which may appear in any of the planning documents, must be assumed on that date to have been cancelled: *Fletcher Estates Ltd. v Secretary of State for the Environment* [2000] 2 W.L.R. 438; ss.14-17, Land Compensation Act 1961

(ii) **The no-scheme rule**: increase or diminution in value of the land that is solely attributable to the underlying scheme of the acquiring authority excluded: *Point Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565; s.6(1) of the LCA ('the Point Gourde rule')

Land Compensation Act 1961, s.6(1) and Sch.1, Part I

6.— Disregard of actual or prospective development in certain cases.

(1) (…)no account shall be taken of any increase or diminution in the value of the relevant interest which, in the circumstances described in any of the paragraphs in the first column of Part I of the First Schedule to this Act, is attributable to the carrying out or the prospect of so much of the development mentioned in relation thereto in the second column of that Part as would not have been likely to be carried out if—

(a) (where the acquisition is for purposes involving development of any of the land authorised to be acquired) the acquiring authority had not acquired and did not propose to acquire any of the land; and

(…)

Schedule 1, Part 1

Case	*Development*
1. Where the acquisition is for purposes involving development of any of the land authorised to be acquired.	Development of any of the land authorised to be acquired, **other than the relevant land,** being development for any of the purposes for which any part of the first-mentioned land (including any part of the relevant land) is to be acquired.

Land Compensation Act 1961, s.14

Section 14

(1) For the purpose of assessing compensation in respect of any compulsory acquisition, such one or more of the assumptions mentioned in sections fifteen and sixteen of this Act as are applicable to the relevant land or any part thereof shall (subject to subsection (3A) of this section) be made in ascertaining the value of the relevant interest.

(2) Any planning permission which is to be assumed in accordance with any of the provisions of those sections is in addition to any planning permission which may be in force at the date of service of the notice to treat.

(3) Nothing in those provisions shall be construed as requiring it to be assumed that planning permission would necessarily be refused for any development which is not development for which, in accordance with those provisions, the granting of planning permission is to be assumed;

(…)

Land Compensation Act 1961, s.16

Section 16

(…)

(3) If the relevant land or any part thereof (not being land subject to comprehensive development) consists or forms part of an area shown in the current development plan as an area allocated primarily for a range of two or more uses specified in the plan in relation to the whole of that area, it shall be assumed that planning permission would be granted, in respect of the relevant land or that part thereof, as the case may be, for any development which—

(a) is development for the purposes of a use of the relevant land or that part thereof, being a use falling within that range of uses, and

(b) is development for which planning permission might reasonably have been expected to be granted in respect of the relevant land or that part thereof, as the case may be.

The central problem

- Refusal and prospective refusal of s.17 application tied up inextricably with planning policies designed to support KBP scheme
- How to consider planning status/hope value where development plan had catered for KBP scheme since 1989?
- **What did statutory scheme/relevant principles require in relation to a policy such as Policy EC/6?**

Before the Upper Tribunal

- HCA argued that:
  - Position as to planning permissions should be determined according to cancellation assumption; cancellation assumption did not require anything beyond assumption that scheme had been cancelled insofar as Plots 13 and 14 were concerned; it followed that prospects of being granted permission for residential development had to be assessed in light of policy EC/6 – ie policy underpinned by KBP scheme
- Claimants emphasised that scheme should be interpreted narrowly; it was for the UT to find what the scheme was as a matter of fact; and that a significant amount of development would have been likely to be carried out irrespective of the scheme

Before the Upper Tribunal

- UT (HH Judge Mole QC and Mr P R Francis FRICS) valued reference land at **£746,000;**
- Noted that s.6(1) required that both increase ***or diminution*** attributable to acquisition had to be left out of account: therefore, refusals of previous applications for permission were given limited weight because they were based almost exclusively on policy EC/6 and the need to bring about a comprehensive and properly funded KBP scheme.

Before the Upper Tribunal

'When it comes to considering a residential development with access from Buckley Hill Lane no increase in value due to KBP should be taken into consideration. (…) by the same token any disadvantages arising from the KBP development should also be left out of account. Thus, it seems to us, that it cannot be said against an independent residential development in the "no KBP world" that it would face a traffic objection because the KBP traffic would need and use up existing highway capacity. To take that into account would be to permit a diminution of the value of the reference land which would be attributable to the scheme. In the same way, a policy objection based upon a failure to make a substantial contribution to the infrastructure of the KBP scheme or a failure to comply with the KBP development plan is also something that, it seems to us, must be left out of account.' [95]

Before the Court of Appeal

- The Court of Appeal (Patten, Sales and Jackson LJJ):
  - Rejected both parties' submissions;
  - Held that the Point Gourde rule/s.6 referred to 'more than just the physical development of th[e] land'. It denoted 'the scheme of development itself with the development plan strategy and policies it contained, and the implementation of those policies in the form of the grant of planning permission and the making of the compulsory purchase order'
  - Found that the UT had struck the balance between the no-scheme universe and the planning actuality in the wrong place; should have entirely disregarded Policy EC/6

The Supreme Court's decision

- Lord Carnwath gave only judgment
- Court rejected HCA's argument that planning assumptions were 'fixed' by reference to application of ss.14-16 of LCA; normal for interplay to occur between the two stages; proposition unsupported by authority
- Planning assumptions operated *in favour of* claimant; did not prejudice any findings as to hope value: s.14(3)
- Question of relevance of underlying policies such as EC/6 a matter of evaluation for the Upper Tribunal: [36]

Significant changes to law since decision

- Law considered by the Supreme Court has now been amended twice
- *Localism Act 2011* replaced ss.14 and 16 with new s.14; express reference to cancellation assumption and provisions as to meaning of underlying scheme, including providing that issue is a question of fact for UT, subject to specific provisions
- Section 32 of the *Neighbourhood Planning Act 2017* makes significant changes to the statutory disregards/no-scheme rule:
  - S.6 is replaced with a statutory framework for the no-scheme principle in ss.6A-6E;
  - Schedule 1 is 'omitted' (i.e. repealed)

Relevance of decision in light of changes to the law?

- (genuine) clarification of correct approach rather than laying down new principles: curtailing the arguably heterodox approach of the CA?
- Valuation disputes under the old rules: valuation date predating coming into force of provisions of 2017 Act (22 September 2017) or 2011 Act (6 April 2012)
- Confirming line of cases to the effect that statutory disregard/no scheme world could inform planning assumptions: *Melwood Unites Pty Ltd v Main Roads Comr* [1979] AC 426; *Jelsen* cases - planning assumptions consideration and disregards are distinct but not hermetically sealed
- Affirming principle that question of relevance of planning policies is pre-eminently a matter of judgment for Upper Tribunal
- Cited in ***Boland v Bridgend CBC*** [2017] R.V.R. 243: cancellation assumption only require assuming cancellation *in relation to reference land*, not to whole of acquired area;

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Thank you

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