

Certificates of Appropriate Alternative Development The appeal to the Upper Tribunal



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The right of appeal – s.18 LCA 1961

- Both the land owner and the acquiring authority have the right of appeal against a certificate of appropriate alternative development issued by the local planning authority.
- There is also a right of appeal against the failure of the local planning authority to issue a certificate within the prescribed period of 2 months from receipt of the application.
- The appeal is to the Upper Tribunal (Lands Chamber): section 18 of the Land Compensation Act 1961
- The appeal must be lodged by making a reference to the UT(LC) within 1 month of the date of issue or expiry of the prescribed period.

Procedure on appeal

- Procedure on a CAAD appeal is governed by the Upper Tribunal (Lands Chamber) Rules 2010 (SI No. 2600)
- The UT(LC) has issued Practice Directions – see Practice Directions Upper Tribunal of the Upper Tribunal (29 November 2010)
- Formal court proceedings
- Statements of Case are required
- The UT(LC) will usually give detailed directions at a CMC
- Witnesses of fact and expert witnesses give evidence on oath and are subject to cross examination
- UT(LC) issues detailed written decision

Powers of the Upper Tribunal – s.18(2) LCA

- The UT(LC) must consider the matters to which the certificate relates as if the application had been made to the UT(LC) in the first place.
- The UT(LC) must, as it considers appropriate, either –
 - (i) confirm the certificate
 - (ii) vary the certificate; or
 - (iii) cancel the certificate and issue a different certificate in its place
- The UT(LC) must therefore –
 - (i) form its own opinion on the matters stated in s.17(1) LCA
 - (ii) form its own opinion on the matters stated in s.17(5) LCA

The nature of the appeal

- A determination of the planning potentialities of the subject land on the assumption that the CPO scheme has been cancelled and will not be revived
- The UT(LC) will approach the appeal by reference to the statutory duties governing the determination of a planning application
- Section 70(2) of the Town and Country Planning Act 1990
- Section 38(6) of the Planning and Compulsory Purchase Act 2004
- The UT(LC) is a specialist valuation tribunal
- The purpose of a certificate is to assist in the assessment of the market value of the subject land under rule 2 of section 5 of the LCA

Considerations

- The date for assessment – see section 22(2) LCA 1961
- The procedure enables the UT(LC) to issue a certificate both as to the present and the future planning potentialities of the subject land – see section 17(b)(ii) LCA 1961
- The procedure enables the UT(LC) to consider and identify conditions and obligations that might (i) enable or (ii) serve to limit the planning potentialities of the subject land – section 17(b)(i) and (iii) LCA 1961
- The focus should be on those planning considerations that add to or limit the market value of the subject land at the valuation date.
- The value of proceeding with an appeal must be judged on that basis.

Thank you for listening
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