

Welcome to Landmark Chambers'

**'Delivering Major Infrastructure: Part 4 – Land
compensation issues – scheme cancellation and
planning assumptions' webinar**

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Your speakers today are...



Topic:
Certificates of
Appropriate
Development
The appeal to the
Upper Tribunal

Tim Mould QC (Chair)



Topic:
Role of CAADs – issues
and risks

Richard Moules



Topic:
The scheme
cancellation
assumption

Heather Sargent



Topic:
Planning assumptions

Nick Grant

The scheme cancellation assumption



Heather Sargent

Introduction

- The “no-scheme” principle: ***Pointe Gourde***: compensation “cannot include an increase in value that is entirely due to the scheme underlying the acquisition”
- “Value to the owner”
- ***Waters v Welsh Development Agency*** [2004] 1 WLR 1304 at [18]: “When granting a power to acquire land compulsorily for a particular purpose Parliament cannot have intended thereby to increase the value of the subject land. Parliament cannot have intended that the acquiring authority should pay as compensation a larger amount than the owner could reasonably have obtained for his land in the absence of the power...” (Lord Nicholls)
- The “no-scheme world”

Amendments to the Land Compensation Act 1961

- Complexities in the previous iteration of the Land Compensation Act 1961
- Amendments made by Neighbourhood Planning Act 2017 with effect from 22 September 2017

The provisions of the Land Compensation Act 1961

S. 5 LCA 1961

Rules for assessing compensation.

Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

- (1) No allowance shall be made on account of the acquisition being compulsory;
 - (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;
- (2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A.**

The provisions of the Land Compensation Act 1961

S. 6A LCA 1961

No-scheme principle.

- (1) The no-scheme principle is to be applied when assessing the value of land in order to work out how much compensation should be paid by the acquiring authority for the compulsory acquisition of the land (see rule 2A in section 5).
- (2) **The no-scheme principle is the principle that—** (a) any increase in **the value of land** caused by **the scheme for which the authority acquires the land**, or by the prospect of that scheme, is to be disregarded, and (b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.

The provisions of the Land Compensation Act 1961

The “no-scheme rules”: s. 6A(3) LCA 1961

- (3) In applying the no-scheme principle the following rules in particular (the “no-scheme rules”) are to be observed.
- (4) **Rule 1:** it is to be assumed that the scheme was cancelled on the relevant valuation date.
- (5) **Rule 2:** it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.

The provisions of the Land Compensation Act 1961

- (6) **Rule 3:** it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.
- (7) **Rule 4:** it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.

The provisions of the Land Compensation Act 1961

(8) **Rule 5:** if there was a reduction in the value of land as a result of— (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or (b) the fact that the land was blighted land as a result of the scheme, that reduction is to be disregarded.

Then s. 6A(10):

- “See also section 14 for assumptions to be made in respect of planning permission”

What is the “Scheme”?

- S. 6D(1) LCA 1961: “the scheme of development underlying the acquisition”
- Subject to s. 6D(2)-(5)
 - (2): Urban development areas, new towns, Mayoral development areas
 - (3): “Relevant transport projects”

What is the “Scheme”?

Upper Tribunal to resolve disputes: identify the underlying scheme “as a question of fact” (s. 6D(5)):

- (a) the underlying scheme is to be taken to be **the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition** unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and
- (b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme **only** if that larger scheme is one identified in the following read together— (i) the instrument which authorises the compulsory acquisition, and (ii) any documents made available with it.

Final questions

- Can “special purchasers” be taken into account in assessing compensation?
- Can marriage / ransom value be taken into account?

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Planning assumptions



Nick Grant

Materials

- Land Compensation Act 1961 – LCA 1961
- Localism Act 2011 – LA 2011
- Neighbourhood Planning Act 2017 – NPA 2017
- ***Viscount Camrose v Basingstoke Corpn*** [1966] 3 All ER 161
- ***Ivens & Sons (Timber Merchants) Ltd v Daventry DC*** (1976) 31 P&CR 480
- ***Porter v Secretary of State*** [1996] 3 All ER 693
- ***Essex Showground Group Ltd v Essex CC*** [2006] RVR 336
- ***In Re Section 14(5)(d) Land Compensation Act 1961*** [2018] UKUT 62 (LC)
- ***Lockwood v Highways England*** [2019] UKUT 104 (LC)
- ***Reeves v STT*** [2019] UKUT 213 (LC)
- ***Secretary of State for Transport v Curzon Park Ltd*** [2020] UKUT 37 (LC)
- ***Leech Homes Ltd v Northumberland CC*** [2020] UKUT 0150 (LC)

The role of the planning assumptions

- S. 5 Rule 2 LCA 1961:
(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise
- Planning assumptions in s.14 LCA 1961 (amended by s.232 LA 2011, s. 32 NPA 2017)
- S. 14(1) LCA 1961
This section is about assessing the value of land in accordance with rule (2) in section 5 for the purpose of assessing compensation in respect of a compulsory acquisition of an interest in land.

Outline

- ***Curzon Park Ltd*** [59]:

The assumed factual context so far as planning permissions (“**PP**”) are concerned comprises:

- Real PP in force at valuation date
- Prospect of other PP being granted on or after valuation date
- Assumed PP for appropriate alternative development at valuation date (“**AAD**”)
- Assumed certainty that PP for AAD will be granted after valuation date

(1) Extant planning permissions

- S. 14(2):
 - (2) *In consequence of that rule, account may be taken—*
 - (a) *of planning permission, whether for development on the relevant land or other land, if it is in force at the relevant valuation date, and*
- S. 14(9): immaterial whether PP
 - Conditional or unconditional
 - Full, outline, or by virtue of development order
 - Deemed by direction under enactment
- ***Curzon Park Ltd*** at [60]: *lifted directly from the real world and carries no counter factual baggage.*

(2) Assumed prospect of other planning permissions

- S. 14(2):

(2) In consequence of that rule, account may be taken— [...]

(b) of the prospect, on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, of planning permission being granted on or after that date for development on the relevant land or other land, other than—

(i) development for which planning permission is in force at the relevant valuation date, and

(ii) appropriate alternative development.

(3) Appropriate Alternative Development

- What is AAD?
 - (4) *For the purposes of this section, development is “appropriate alternative development” if—*
 - (a) *it is development, on the relevant land alone or on the relevant land together with other land, other than development for which planning permission is in force at the relevant valuation date, and*
 - (b) *on the assumptions set out in subsection (5) but otherwise in the circumstances known to the market at the relevant valuation date, planning permission for the development could at that date reasonably have been expected to be granted on an application decided—*
 - (i) *on that date, or*
 - (ii) *at a time after that date.*

(3) Appropriate Alternative Development

- How is it taken into account?
- If s. 14(4)(b)(i) (PP granted at valuation date): assume PP in force at valuation date (s. 14(3)(a))
- If s. 14(4)(b)(ii) (PP granted after valuation date): assume it is certain PP will be granted at the later time at which it could reasonably have been expected to be granted (s. 14(3)(b))

S. 14(5) Assumptions

- (a) that the scheme of development underlying the acquisition had been cancelled on the launch date,*
 - (b) that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme,*
 - (c) that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers, and*
 - (d) if the scheme was for use of the relevant land for or in connection with the construction of a highway (“the scheme highway”), that no highway will be constructed to meet the same or substantially the same need as the scheme highway would have been constructed to meet.*
- See ***In Re Section 14(5)(d)*** and s. 14(7)

S. 14(5) Assumptions

- “Launch date” defined in s. 14(6)
- If any dispute as to what is the underlying scheme – UT to determine subject to:
 - Scheme to be taken as that authorised by the Act or other instrument authorising compulsory acquisition, unless it is shown that the underlying scheme is larger than (but incorporating) scheme provided for by that instrument;
 - UT may only permit AA to advance evidence of a larger scheme if it is identified by (i) instrument authorising the compulsory acquisition and (ii) documents published with it. (s. 14(8))

Key points

- “Valuation date” - s. 5A, for blight notices see ***Lockwood; Reeves***
- How do you establish?
 - Agreement, expert evidence, CAAD under s. 17
 - Determine on balance of probabilities in light of all evidence: ***Porter***
 - What would a reasonable LPA have decided, if correctly directing itself on law and planning policy: ***Essex Showground Group; Leech***
- The effect of permission on value?
 - Issues of demand: ***Viscount Camrose***
 - Issues of implementation: ***Ivens & Sons***

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Role of CAADs – issues and risks



Richard Moules

Background to CAADs

- The market value of land may include its development value
- The significance of development being identified as appropriate alternative development (AAD) is that, when compensation is assessed, it must be assumed that planning permission for that development either was in force at the valuation date, or would with certainty be in force at some future date: see s.14(3) LCA 1961.
- Following the Localism Act 2011, where there was at the valuation date a reasonable expectation of a particular planning permission being granted (ignoring the scheme and the CPO) there is an assumption that that planning permission is in force i.e. reasonable expectation is elevated to certainty.

Purpose of CAADs

- A CAAD is a means of determining what a site could have been used for if the scheme did not exist
- The function of a CAAD is to identify every description of development for which planning permission could reasonably have been expected to be granted (either on the valuation date or at a later date) if the land had not been acquired compulsorily
- The grant of a CAAD establishes conclusively that the development described in it is AAD: s.17(6)(a) LCA 1961

When might a CAAD be beneficial?

- There is no adopted development plan covering the land to be acquired
- The adopted development plan indicates Green Belt or leaves the CPO land without a specific allocation
- The amount or mix of development which would be allowed is uncertain
- The extent and nature of planning obligations and conditions is uncertain

Disadvantages & risks

- The application may be refused by the local planning authority
- Local planning authorities sometimes find it difficult to hypothesise on the terms directed by s.17 LCA 1961
- The CAAD application (and possible appeal) may add cost and delay
- S.17 CAADs do not deal with retained land
- A CAAD may not be fully determinative of the planning status of acquired land e.g. the Tribunal can still determine a hope value claim

Secretary of State for Transport v Curzon Park Ltd

- [2020] UKUT 37 (LC)
- 4 contiguous sites acquired by CPO to construct HS2 terminus at Curzon Street, Birmingham
- 4 different landowners & 4 different vesting dates
- Each applied for a CAAD for mixed-use development including purpose built student accommodation

Secretary of State for Transport v Curzon Park Ltd

- Each CAAD application was ‘self-contained’
- In the real world, the cumulative effects of the proposed development would be a material planning consideration
- Birmingham CC considered each CAAD application in isolation
- The SofS argued BCC erred and should have considered the other CAAD applications (and then necessarily issued CAADs for smaller scale development leading to a lower total compensation bill)

Secretary of State for Transport v Curzon Park Ltd

- Preliminary issue:

“Whether, and if so how, in determining an application for a certificate of appropriate alternative development under section 17 LCA 1961 (CAAD) the decision-maker in determining the development for which planning permission could reasonably have been expected to be granted for the purposes of section 14 LCA 1961 may take into account the development of other land where such development is proposed as appropriate alternative development in other CAAD applications made or determined arising from the compulsory acquisition of land for the same underlying scheme”

Secretary of State for Transport v Curzon Park Ltd

- The Tribunal rejected the landowners' argument that the scheme cancellation assumption required CAAD applications on other sites to be disregarded
- But the Tribunal agreed with the landowners' argument that CAAD applications were not material planning considerations for real world planning applications, and that there was no basis in the statutory scheme for treating CAAD applications as notional planning applications as the SofS contended
- The Tribunal also disagreed with the SofS's argument that this interpretation would lead to 'excessive compensation' see [63]

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Certificates of Appropriate Alternative Development The appeal to the Upper Tribunal



Tim Mould QC (Chair)

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.

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Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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