

Planning assumptions



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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***

Thank you for listening
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