

Role of CAADs – issues and risks



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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]

Thank you for listening
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