COMPULSORY PURCHASE: CASE LAW UPDATE

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terra firma CHAMBERS

Ramac Holdings Ltd v Kent County Council
[2014] UKUT 109 (LC)

1. This case concerns a reference to the Upper Tribunal (lands Chamber) to determine the compensation payable by Kent County Council (the acquiring authority) to Ramac Holdings Limited ("Ramac") following the compulsory purchase of land. Ramac owned the freehold interest in an industrial estate. Part of the site was occupied by commercial buildings. The western edge was bounded by a strip of landscaping comprising trees and shrubs. It included a tree screen pursuant to a planning condition to break up the impact of the commercial use. The land acquired by the Council extended the full length of the western edge. Its redevelopment, pursuant to the scheme behind the compulsory purchase, included removal of the trees.
2. The principle issue in dispute between the parties was how the reference land should be valued, and whether it should be valued as industrial land, forming part of the rest of the site, or as scrubland or woodland adjacent to a road. Ramac also claimed compensation for injurious affection for the cost of replacing the tree screen, disturbance for resurfacing works, and pre-reference costs. The Council argued that any compensation awarded under those heads should be off-set against betterment caused by the scheme.
3. *Held* that: (1) The reference land had to be valued as if it alone was being sold on the open market by a willing seller. Insofar as the claimant suffers a loss because of a diminution in the value of the retained land then this will form a claim for compensation for severance and/or injurious affection. It does not justify adopting an artificial approach to valuing the reference land as if it still formed part of a larger whole (para 62); (2) the potential future cost for landscaping would make no difference to the amount a purchaser would pay for the retained land, and Ramac failed to show that the loss of the reference land and the landscaping o it has resulted in a diminution in value of the retained land (paras 94-100); (3) the object of

disturbance compensation is to cover personal losses suffered by Ramac as a result of it having to sell its land against its will. It does not include losses caused by the construction of the scheme underlying the compulsory purchase; and (4) the scheme did not produce any tangible betterment in valuation terms.

4. Point to note from the Tribunal's opinion:
   - A valid claim for injurious affection does not justify adopting an artificial approach to valuing the reference land as if it still formed part of a larger whole.

Arnold White Estates Ltd v National Grid Electricity Transmission Plc [2013] UKUT 5 (LC) and [2014] EWCA Civ 216

5. This case concerns a claim for compensation under paragraph 7 of Schedule 4 to the Electricity Act 1989 in respect of a statutory wayleave granted to National Grid Electricity Transmission Plc ("National Grid") across land owned by Arnold White Estates Ltd ("AWE"). AWE had entered into conditional contracts for the sale of land to two firms of house builders. The contracts were conditional on AWE removing an existing overhead electricity line. The line had been constructed and retained under a terminable wayleave granted in 1964 by the then owners of the land. AWE duly terminated the wayleave and served notice on National Grid requiring its removal. That prompted National Grid's application under the 1989 Act.
6. AWE claimed that compensation should be calculated with reference to the indexed price under the contract with the house builders, being £5,829,477, which it says represented its loss. National Grid argued that compensation cannot be based on the contract as it was personal to AWE, did not create an interest in land and was not capable of being assigned.
7. *Held* that: (1) The contract created an interest in land, and compensation to be assessed on the difference between the contract price as at the valuation date and the value that the land in fact had at that date (paras 32-33, 35-36 and 38); and (2) in assessing the value of the land the outline planning permission had to be considered.

8. Points to note from the Tribunal's opinion:
    - Common ground that the principle of equivalence in *Horn v Sunderland* and *Shun Fung Ironworks* should be applied.
    - Contractual losses are recoverable – paragraph 7 is in the most general of terms.
    - The only limitation is that the loss must be suffered by the claimant in his capacity as owner or occupier of the land.
    - There is no need to show the effect upon the land itself of the wayleave.
    - The value to the owner of the land is of importance.

Stynes v Western Power (East Midlands) Plc
[2013] UKUT 214 (LC)

9. This case concerns a claim for compensation for injurious affection in relation to a wayleave granted over the claimants' property. The Secretary of State granted a necessary wayleave to Western Power Distribution East plc ("Western Power") in terms of Schedule 4 to the Electricity Act 1989. The wayleave allowed Western Power to retain an electricity line above the claimants' property. Western Power also owned a pylon close to the rear of the claimants' property.
10. The main issue before the Tribunal was whether, under paragraph 7 of Schedule 4 to the 1989 Act, the claimants were entitled to compensation for injurious affection not only for the effects of the part of the line that passed over their property, but also, by the operation of section 44 of the Land Compensation Act 1973 (or in accordance with the principle of equivalence) for the effects of the pylon on the adjacent land.
11. *Held* that: compensation could not be granted under Schedule 4, paragraph 7 for the effect of the pylon, which was not on land owned by the claimants, to which the wayleave did not relate, and as to which no rights were conferred on Western Power by the grant of the wayleave.
12. Points to note from the Tribunal's opinion:

- A necessary wayleave under paragraph 6 of Schedule 4 is not an easement, or any form of interest in or right over land. There is therefore a distinction between Schedules 3 and 4.
- A claim under paragraph 7 of Schedule 4 cannot be made in respect of land neighbouring and not owned by the claimant.
- *"Compensation in respect of the grant"* restricts the availability of compensation under paragraph 7(1) to losses that are specifically attributable to the grant of the wayleave, and only that – there is no general injurious affection claim.

Brickkiln Waste Limited v Northern Ireland Electricity
2014 WL 320350

13. This case again concerns a claim for compensation in relation to a wayleave granted for the retention of electricity cables over the claimants' property. The tribunal held that Schedule 3 and Schedule 4 of the of the Electricity (Northerm Ireland) Order 1992 clearly distinguished between the compulsory acquisition of land and the acquisition of wayleaves.
14. The Tribunal compared the relevant provisions against those in the 1989 Act, and, having regard to case law from England and Wales, and Scotland, concluded that a necessary wayleave does not involve the acquisition of an interest in land.

Network Rail Infrastructure Ltd v Scottish Ministers
2014 SC 15

15. Network Rail Infrastructure Ltd ("Network Rail") appealed to the Court of Session against a decision of a reporter appointed by the Scottish Ministers. The reporter's decision concerned an appeal by Network Rail against three certificates of appropriate alternative development ("CAADs") issued pursuant to section 25 of the Land Compensation (Scotland) Act 1963.
16. The appeal to the court concerned the appeals procedure under section 26 of the 1963 Act, and more specifically article 4 of the Land Compensation (Scotland) Development Order 1975 (SI 1975/1287), which provides, *inter alia* , as follows:

"(3) The appellant shall within one month of giving notice of appeal, or such longer period as the [Scottish Ministers] may in any particular case allow, furnish to the [Scottish Ministers] one copy of the application to the planning authority, and of the certificate (if any) issued by the planning authority together with a statement of the grounds of appeal. (4) If an appellant does not within the time limited under the last preceding paragraph furnish to the [Scottish Ministers] the copies of the documents thereby required, the appeal shall be treated as withdrawn."

17. On 27 October 2011, having received notice of Network Rail's appeal against the CAADs, the reporter issued instructions stating that as required by article 4 of the 1975 Order, Network Rail should forward a copy of the application, the CAAD and a statement of the grounds of appeal within a month. On 3 November 2011, property developers Grange Estates (Newbattle) Limited ("Grange Estates") submitted that the appeals were invalid and incompetent having regard to their timing. Copies of the CAADs were supplied to the reporter with that letter. On 14 November 2011, the reporter advised by email that a further date for submission of the grounds of appeal would be fixed once the initial question of validity had been dealt with. On 17 January 2012, the reporter confirmed that the notice of appeal had been given in time and accordingly required the appellants to submit their grounds of appeal and supporting documentation within one month of the date of the letter. Grounds of appeal were submitted by Network Rail on 14 February 2012. The reporter then requested a response and also asked that she be furnished with copies of the CAAD applications. Grange Estates then argued that the appeal should be treated as withdrawn as the appellants had failed to comply with article 4(3) of the 1975 Order by failing to provide copies of the applications within the relevant timeframe. On 16 March 2012, the reporter concluded that the appellants had so failed and that there was no discretion to extend the time-limit. She held that the appeals were to be

treated as withdrawn in terms of article 4(4) of the 1975 Order. Network Rail appealed that decision to the Court of Session. The court refused the appeal.

18. *Held* that: (1) all of the documents specified in article 4(3) of the 1975 Order had to be provided within one month of the date of the letter of 17 January 2012 (para 23); (2) applying the test of the reasonable recipient informed of the background circumstances, the references to supporting documents in the letter of 17 January 2012 were references to the documents required in terms of article 4(3) (para 25); and (3) placing the material on a website without something more in terms of drawing it to the attention of the other party is not sufficient to comply with a statutory requirement to furnish information or documents (para 27).
19. Points of note from the court's opinion:
    - The court, in construing the meaning of "supporting documents" and "supporting documentation" in the reporter's letters, applied the test of the "reasonable recipient informed of the background circumstances" (applying *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749). (para 24)
    - The placing of material on a website, without something more (e.g. providing a hyperlink to a website, or uploading the information to a particular website at the request of the intended recipient), is not sufficient to amount to "furnishing" of that material to another for the purposes of statutory interpretation. [para 27]
    - It is the logical and clearly expressed intention of Parliament that it is the applicants who are responsible for the furnishing of documents under article 4(3) in order to proceed with their appeals. [para 27]

Riva v Edinburgh Airport Limited
2013 SLT (Lands Tr) 61

20. A landlord and tenant of property in the vicinity of an airport ("the applicants") made applications for reference to the Lands Tribunal of objections raised in counter-notices to blight notices served by them. At issue before the tribunal were the

requirements of section 101 of the Town and Country Planning (Scotland) Act 1997 in relation to endeavours to sell the qualifying interest in the "hereditaments" and inability to sell except at a price substantially lower than might otherwise reasonably have been expected (s.101(1)(b) and (c)). The respondents objected to the validity of the blight notice, and the relevancy of the applicants claim in relation to (i) the applicants' endeavours to sell and (ii) the price they would have obtained, were it not for the blight. The tribunal dismissed the applicants' references.

21. *Held* that: (1) Even with reference to the Town and Country Planning (General) (Scotland) Regulations 1976 Sch.1 it was not persuasive that the blight notices, when read as a whole, omitted to give particulars of the endeavours to sell, accordingly they were formally valid. (2) It was not fatal to the applicants' claim to have made reasonable endeavours to sell that they were not attempting to sell after August 2009, moreover it had to be rejected that the applicants' averments on reasonable endeavours to sell were not sufficiently clear, and while they could be clearer it did seem that they had, in the course of their averments, done enough to identify attempts to sell the relevant interests. (3) There was no relevant and specific averment of the price for which the applicants' qualifying interests might reasonably have been expected to sell if no part of the hereditaments were, or were likely to be, blighted land, for the purposes of s.101(1)(c) of the 1997 Act.
22. *Opinion*, that if it was necessary to consider whether the blight notice was to substantially the like effect, reading the notice as a whole it was clear that it was.
23. Points to note from the tribunal's opinion:-
    - This might be the first case in this area of law on the correct approach to be taken in comparing a prescribed form against an actual notice given and deciding whether they are the same or at least "substantially to the like effect". [para 11]
    - The approach taken by the court is as follows:
        - First question is whether or not the notices omit anything required by the regulations

- Take a purposive approach – did the notice convey the important substance?
- The purpose of the requirement to state the endeavours to sell the land is to enable the recipient authority to decide whether it has grounds, based on the adequacy, judged on a standard of reasonableness, of the endeavours to sell to object to the notice [paras 12-15]

- The court considered the status of the notes to the prescribed form, and considered that they "must surely be below that of the prescribed form". [para 14]
- Whether or not an applicant has made "reasonable" endeavours to sell must be considered in context. Factors include:
  - Timing of the application
  - Extent of the efforts
  - Professional advice received
  - Delay [paras 32-34]
- It is an essential part of the statutory requirement that an applicant addresses with relevant and specific averments the price at which their interests might reasonably have been expected to sell. [para37]

Emslie v Scottish Ministers
2014 G.W.D. 6-132

24. An owner of property served a counter notice on the Scottish Ministers in terms of the Land Compensation (Scotland) Act 1973 s.49(1) requiring them to purchase the whole of her property on the basis that the remaining subjects were not reasonably capable of being farmed as a separate agricultural unit. The Scottish Ministers challenged the counter notice.
25. The main issue before the Tribunal was whether the reference to use of the land in the first part of s.49 of the 1973 Act included reference to potential use.

26. Held: (1) In broad terms, the first stage of s.49 required assessment of the use actually being made of the land at the time of the general vesting declaration, and the term "reasonably capable of being farmed" was not expressly applied to the first stage and there was no justification for treating it as an implicit part of the first stage test; it was clear that the Act did not contemplate, at the first stage, an inquiry as to the potential use of the land. (2) Where an area of ground was being used for horses, it might readily be converted to use for livestock, however, that potential would not allow the land to be described as used for agriculture. (3) The house and the field used for the horses could not be said to have been, or to be, used for agricultural purposes, the subjects were a unit in the sense that they were all in the applicant's ownership and because of their physical contiguity but that was not a factor which had any bearing on the assessment of their agricultural characteristics. (4) The retained land could not properly be described as agricultural land or as forming part of such an agricultural unit, accordingly, the Scottish Ministers' challenge to the validity of the counter notice was well founded.
27. Points to note from the opinion of the tribunal:
    - S.49 contains a two part test. [paras 16-18]
    - Part 1 is in the present tense, and considers the actual use of the land at the time of the general vesting declaration. [para 16]
    - "Reasonably capable of being farmed" does concern future use, but is in part 2. [paras 17-18]
    - An owner of an agricultural unit can claim under s.49 even if not herself in active occupation for agricultural purposes. It is sufficient that the land is used for agricultural purposes by someone. [para 14]
    - It is not necessary for agricultural land to be profit making for it to be classed as being used by way of trade or business. £1,000 p.a. is a sufficient level of return. [para 23]

- Certain factors might impart an agricultural character on otherwise non-agricultural land. These include:
    - In the same ownership
    - Encompassed by one boundary
    - Proximity of farmhouse to relevant activity
    - Potential for whole subjects to be used as small holding
    - Dominant use for agricultural purposes [paras 28-31]

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