

Secretary of State for Transport (Appellant) v Curzon Park Ltd and others (Respondents)

[2023] UKSC 30

Date: 10 August 2023

Justices

Lord Kitchin, Lord Sales, Lord Hamblen, Lord Leggatt, Lady Rose

Background to the Appeal

When land is compulsorily purchased, the landowner is entitled to compensation under the Land Compensation Act 1961 (the "Act"). The basic measure of compensation is the open market value of land if sold by a willing seller. The landowner is also entitled to compensation for enhancement of the value of the land resulting from actual or prospective planning permission for its development. Under section 14 of the Act, in assessing the value of the land, account may be taken of: planning permission which is in force in respect of it at the relevant valuation date; the prospect at the valuation date of planning permission being granted in respect of it on or after that date; and 'appropriate alternative development' of the land. Development is 'appropriate alternative development' if, on stated assumptions, at the relevant valuation date planning permission for the development could reasonably have been expected to be granted on an application decided either on that date or at a time after that date. Under section 17 of the Act, the landowner may apply to the local planning authority for a certificate of appropriate alternative development ("CAAD") stating that there is development which is appropriate alternative development for the purposes of section 14.

The issue which arises on this appeal is whether, in determining an application for a CAAD for a particular parcel of land, the decision maker may take into account CAAD applications or decisions which relate to the development of other land.

The factual context in which the issue arises is the valuation of four neighbouring sites which were compulsorily acquired in 2018 by the Secretary of State for Transport in order to construct a railway terminus in Birmingham for Phase 1 of HS2 (the London to West Midlands high-speed railway). The four respondents were the owners of the sites and each of them applied for and was granted a CAAD in relation to their respective sites.

In determining the respondents' CAAD applications, Birmingham City Council considered each application in isolation, rejecting the Secretary of State's contention that the cumulative impacts of all the applications for CAADs should be considered. The Secretary of State appealed to the Upper Tribunal, which held that, subject to certain boundaries, it was for the decision maker to give other CAAD applications or decisions relating to other land such evidential weight as they thought appropriate. The Upper Tribunal rejected the Secretary of State's arguments that CAAD applications in respect of other sites should be treated as notional applications for planning permission and that each of the respondents was liable to be over-compensated unless the cumulative effect of development which had or was likely to come forward on neighbouring sites was taken into account.

The Secretary of State appealed to the Court of Appeal. Before the Court of Appeal, the respondents argued that section 14 of the Act requires the decision maker to assume that the scheme of development has been cancelled on the launch date (the "**cancellation assumption**"), and from the cancellation assumption it follows that no CAAD applications could have been made pursuant to section 17 of the Act in the counterfactual scenario posited by the statute (the "**counterfactual**

cancelled scheme world''). As such, the respondents contended, the inevitable consequence of the cancellation assumption is that the decision maker must disregard any applications or decisions in respect of other sites which may in fact have been made. The Court of Appeal accepted this argument and held that the decision maker was not entitled to take into account other CAAD applications or decisions relating to the development of other land. The Secretary of State now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal to a limited extent, holding that the declaration made by the Upper Tribunal should be restored. Lord Sales and Lord Hamblen give the judgment, with which all the other members of the Court agree.

Reasons for the Judgment

(1) Is taking account of CAAD applications or decisions precluded by the cancellation assumption?

Contrary to the Court of Appeal's judgment, the argument that other CAAD applications or decisions cannot be taken into account due to the cancellation assumption must be rejected. The question to be addressed is whether at the valuation date planning permission could reasonably have been expected to be granted. That question is to be determined making the assumptions required by section 14(5) of the Act but otherwise in the circumstances known to the market at the relevant valuation date. In answering that question no restriction is placed on the evidence which can or cannot be used other than that it must be circumstances known to the market. If it is, then any relevant real world evidence may be relied upon, including for example a CAAD application or decision that may have been made in relation to land other than the land in issue prior to the valuation date [60-61].

It would be odd to say that evidence which happens to exist in the real world which is capable of providing relevant assistance in answering the questions to be addressed in constructing the counterfactual cancelled scheme world under the Act should be ignored. It would require clear statutory language to produce such an effect, and there is none in the Act. So if CAAD applications or decisions are capable of being a source of relevant evidence, the Act does not preclude reference being made to them [65].

(2) What is the relevance of other sites/proposals to the determination of planning permission applications?

The ways in which other sites or proposals may be relevant to the determination of a planning permission application include: where alternative sites exist which it is reasonable to expect may be developed or brought forward for development within a reasonable time, and which through their development might satisfy a particular need in the public interest at less cost to other aspects of the public interest as compared to the development of the site in question; where the cumulative effects of multiple proposals is adverse to some aspect of the public interest; and where the proposed type of development on particular land would be incompatible with the grant of planning permission for other forms of development on neighbouring land [67]. Other sites or proposals may also be relevant in relation to the principle of consistency in public law decision-making [68].

(3) How should the counterfactual cancelled scheme world be constructed as at the valuation date?

When constructing the counterfactual cancelled scheme world, it is clear from the language of section 14 that it is not legitimate to consider whether planning permission for development either for the land in issue or for any other land might have been granted in the notional period between the deemed cancellation of the scheme on the launch date and the valuation date. In the case of planning permissions which exist in the real world, the relevant date to see if there are any in force is the

valuation date. In the case of assessing the prospect of the grant of planning permission for the land in issue or other land, this involves looking at the circumstances as known to the market at the valuation date. In both cases, no speculation about the notional period between the cancellation date and the valuation date is authorised. The same is true in relation to assessing whether the test for appropriate alternative development is satisfied [74].

Section 14 is drafted so as to specify a reasonably certain process of assessment of the value of the land in issue, focusing on circumstances as they actually exist (subject to the cancellation assumption) at the valuation date and based on an objective set of circumstances as known to the market at that date [76].

(4) Are CAAD applications and decisions distinct from applications for and grants of planning permission? Is a CAAD application or decision a material planning consideration?

The Upper Tribunal and the Court of Appeal were right to conclude that a CAAD application is not equivalent to an application for planning permission in the real world and that a decision to grant a CAAD is not equivalent to the grant of planning permission in the real world. The CAAD regime exists only as a mechanism to assist with the assessment of the value of the land in issue in the counterfactual cancelled scheme world for the purpose of determining the amount of compensation which is payable in respect of it [77]. Neither a CAAD application nor a decision to grant a CAAD are material planning considerations. They play no role whatever in the real planning world [78].

Accordingly, the grant of a CAAD does not have the effect of meeting a planning need for a particular type of development in the real world or in the counterfactual cancelled scheme world [81].

(5) May account be taken of evidential material contained in a CAAD application?

In the determination of a CAAD application, in so far as it is relevant, the local planning authority (and the Upper Tribunal) is entitled to refer to the pack of material submitted in support of a CAAD application for other land and to treat it as a readily available source of evidence bearing upon the application of the test for whether development is appropriate alternative development. The local planning authority has to bear in mind that the other CAAD application is not to be treated as if it were itself an application for planning permission in respect of the other land, and can only draw upon the material submitted in support of that application to the extent that it casts light upon the circumstances known to the market at the valuation date for the land in issue [85].

(6) Can CAAD applications or decisions relating to land other than the land in issue be relevant and taken into account, and if so in what circumstances?

CAAD applications in respect of other land, along with the material submitted in support of them, may have some relevance in showing how the market would expect landowners holding land ripe for development to seek to develop their land. Such landowners would be expected to act to maximise their returns by focusing development proposals for their land on the most profitable forms of development likely to be appropriate for the area in question. Similarly, landowners who make CAAD applications are likely for ordinary reasons of self-interest to press for a CAAD for patterns of development which would reflect the highest contribution to the value of their land. Accordingly, if the CAAD applications in relation to plots of land in the same general area revealed a pattern in terms of the development sought to be reflected in the CAADs, that could provide some evidence to show how market actors would have been likely to respond to known market circumstances at the valuation date for the land in issue in the counterfactual cancelled scheme world [92].

Information in CAAD applications and information in planning applications in the real world are both forms of real world information. The former is information derived from the behaviour of

landowners in the real world of making applications to seek compensation under the Act. The extent to which information in a CAAD application or information from planning applications in the real world provide material capable of providing analogies relevant to an assessment of such matters for the purposes of the construction of the counterfactual cancelled scheme world will depend on how closely the circumstances in each case are comparable. This would be a matter for the assessment of the local planning authority (or the Upper Tribunal, as the case may be), subject to the usual constraints imposed by general public law [93].

Conclusion

For the foregoing reasons, the appeal is allowed to the limited extent indicated. The declaration made by the Upper Tribunal should be restored [100].

References in square brackets are to paragraphs in the judgment

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available online. [Decided cases](#)