UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2022] UKUT 00142 (LC)

UTLC Case Numbers: LC-2021-046/047

Royal Courts of Justice

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – COMPULSORY PURCHASE – road scheme – isolated plots forming part of operating gold course in the green belt - lack of helpful comparable evidence - hope value – compensation determined at £645 and £1,290

IN THE MATTER OF TWO NOTICES OF REFERENCE

BETWEEN:

CAROLYN TAYLOR (LC-2021-046)
MARTIN TAYLOR (LC-2021-047)

Claimants

-and-

THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT

Acquiring Authority

Re: Land at Woodford Road, Woodford, Stockport

P D McCrea FRICS FCIArb

DECISION BY WRITTEN REPRESENATIONS

The following cases are referred to in this decision

Garner and Garner v The Metropolitan Borough Council of Stockport [2021] UKUT 00284(LC)

Budhathoki and Ors v The Metropolitan Borough Council of Stockport [2022] UKUT 00035(LC)

Introduction

1. This decision concerns two plots of land that were compulsorily purchased in early 2015 by the acquiring authority, the Metropolitan Borough Council of Stockport, for the construction of the Hazel Grove to Manchester Airport Relief Road ("the scheme"). The enabling CPO for the scheme was The Metropolitan Borough of Stockport (Hazel Grove (A6) to Manchester Airport A555 Classified Road) Compulsory Purchase Order 2013, which was made by the acquiring authority on 6 December 2013 and confirmed by the Secretary of State on 26 January 2015.

2. Notices to Treat were served on each claimant by the acquiring authority on 6 February 2015, and Notices of Entry on 9 February 2015. Possession was taken, therefore fixing the valuation dates for the purposes of these references, on 10 March 2015.

3. Despite the road having been in use for some years, title to the plots has not been transferred, and the acquiring authority made two references to the Tribunal for compensation to be assessed in order that the authority could then proceed to pursue the deed poll procedure under section 9 of the Compulsory Purchase Act 1965.

4. The claimants are Carolyn Taylor (LC-2021-046) and Martin Taylor (047). The parties agreed that the determination of compensation should be conducted under the Tribunal's Written Representations procedure. Mr and Mrs Taylor have submitted written evidence. For the acquiring authority, written expert evidence was submitted by two Directors of CBRE: Mr Harry Bolton MRTPI on planning and Mr Henry Church MRICS FAAV in respect of valuation.

5. Some thirty references have been made to the Tribunal because of the scheme, many of which were settled by agreement, and others are in progress. To date, two decisions have been published. In *Garner and Garner v The Metropolitan Borough Council of Stockport* [2021] UKUT 00284(LC), the Tribunal (Mr Mark Higgin FRICS) awarded compensation of £584,971 in respect of the compulsory acquisition of a car park, grazing land, and a telecoms mast site. In *Budhathoki and Others v The Metropolitan Borough Council of Stockport* [2022] UKUT 00035(LC), the compulsory acquisition of several small plots resulted in compensation of between £645 and £1,935. The land of two of the claimants in that case, Mpande and Annie Simumba, each of whom were awarded £600 before a basic loss addition for parcels of 443 sqm, was a matter of yards away from the claimants' land in these two references.

Facts

6. The scheme involved the construction of a nine-mile dual carriageway linking the A6 at Hazel Grove with Manchester Airport. The road, which incorporated the existing section of the A555, crossed several radial roads, rail crossings, open space, agricultural land, industrial and commercial buildings, and a network of open green space and broader countryside.

7. The claimants' holdings formed part of the former Woodford Golf Course, just to the south of the road line, accessed from the A5102 Woodford Road. They comprised a number of a wider

series of small plots as described in *Budhathoki* and are three adjacent parcels of land, each of which is parallelogrammatic in shape. Martin Taylor's two parcels - 5/21 and 5/21A totalling 302 sqm, and 5/21B and 5/21C totalling 308 sqm - sit either side of Carolyn Taylor's parcel – 5/22 and 5/22A which totals 335 sqm.

8. The claimants each bought their plots from the owner of the golf course, who was seeking to raise capital. Plots on the periphery of the course were sold to adjoining owners as garden extensions, whereas those more central, as the reference land, were sold as plots said to have development potential. The dates and purchase prices are not before me in evidence. The schedule to the Order notes that in each case the occupier of the land was 'The Secretary, Moor End Golf '. As in *Budhathoki*, there appears to have been some sort of lease-back arrangement to allow golf to continue despite the club not owning the freehold.

9. The golf course subsequently closed and has since been, in part, the subject of residential redevelopment.

The basis of compensation

10. It is important to briefly explain the basis upon which compensation is to be assessed. In *Garner* (at 12-13) the Tribunal set out the statutory provisions that were in force at the valuation date. In short, we are to assume a sale of the reference land in the open market on the valuation date, assuming that the road scheme had been cancelled on the launch date, and that there was no prospect of a similar scheme being carried out. In assessing that value account may be taken of the prospect, in the circumstances known to the market at the valuation date, of planning permission being granted on or after that date for development of the reference land or other land.

Evidence

11. Expert evidence for the acquiring authority was given by Mr Bolton on planning and Mr Church on valuation. To be fair to both, their expert reports pre-dated the Tribunal's decision in *Garner*, in which they both also gave evidence, and Mr Church's report pre-dated the Tribunal's decision in *Budhathoki*, in which his colleague Ms Sarah Everall gave similar evidence to that of Mr Church in these references. But no application was made for an amendment or additional evidence to be submitted as a result of those decisions.

12. Mr Bolton said that the reference land was located within, and made a strong contribution to the purposes of, the Green Belt. There was no prospect of it securing planning permission for residential or indeed any other use not explicitly referenced as acceptable in the Green Belt by paragraph 89 of the National Planning Policy Framework (2012). Those uses which might be allowed were buildings for agriculture and forestry, provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, the extension of or replacement of an existing building, subject to size constraints, and limited infilling. Accordingly, Mr Bolton said, there was no potential of development.

13. Taking his lead from Mr Bolton, Mr Church's view was that no hope value attached to the reference land and valued by reference to comparable evidence. His schedule comprised the same eight comparables (seven transactions and one plot offered to the market, but which didn't sell) as relied upon by Ms Everall in *Budhathoki*. They included auction sales of three small

plots of land in Aylesbury at £50 each, five small plots in Birkenhead at £10 each, and four plots in Wrexham at between £50 and £150 each. There were some transactions at higher figures – 1.96 acres in Bury sold at £9,000, and 0.24 acres in Keighley sold at £2,000, one month before the valuation date. The transaction that is perhaps the most helpful is the sale of 0.07 acres (so, broadly the same size as the reference land plots) again at Birkenhead, sold a week before the valuation date at £625. Mr Church assessed the value of each of the three parcels of land at £500, with compensation under Rule 2 therefore at £1,500.

14. Mr Church hinted that the Taylors might have been victims of a land banking scam, as described in *Budhathoki*. The Taylors emphatically rejected this; they believed the reference land had development potential at some point in the future, which was why they bought it. Those competing positions might not, of course, be mutually exclusive.

15. Mr and Mrs Taylor valued each parcel at £75,000. They said that the whole argument was whether the land would have had potential to build/develop at some time in the future. They firmly believed that there was such potential, which is why they bought the land.

16. In their original submissions, the Taylors relied on a number of properties in support of their claim. First, land to the rear of 141 Woodford Road. This was the subject of a successful planning application (planning reference DC/076101) for residential redevelopment, and the Taylors say subsequently sold for £300,000. Secondly, land on the golf course itself, less than 100m from the reference land, where permission (DC/070971) was granted for eight dwellings. Thirdly, on land adjacent to the proposed eight dwellings (DC/077533) planning permission for one house was granted on appeal. The Taylors said that the land was not yet up for sale, but would likely have a value in the order of £500,000. Fourthly, 124A Woodford Road was purchased in December 2017, and developed as two houses (DC/064918). Fifthly, they pointed to the development of the former British Aerospace site, where some 900 houses were being built. The Taylors said that the council only had a 2.6-year land supply under the National Planning Policy Framework, and that plots such as the reference land would obtain planning permission at some point.

17. In response, Mr Church said that the evidence upon which the Taylors relied generally concerned plots with planning permission. As for the development of the golf course, this was development of the existing golf course buildings, and the application noted that the scheme had been specifically prepared to ensure that the redevelopment caused no greater impact on the Green Belt that the existing buildings, using the same footprint and heights as the existing clubhouse.

18. In their response to the authority's expert evidence, the Taylors referred to a number of other developments which they said *had* occurred in the Green Belt. The first was land in the garden of 181 Woodford Road (DC/077533) granted on appeal on 18 August 2021; the second was the development of the golf course buildings referred to above; the third was Mr and Mrs Taylor's primary comparable - land at Foden Lane, Woodford (DC/064515) refused by the council on 2 May 2017 but granted on appeal on 22 December 2017. The fourth was land between 510-518 Chester Road, Woodford (DC/071149), built, they said, on a farmer's field in the Green Belt, following planning consent by the council on 15 January 2019.

Discussion

19. I deal first with the developments which the claimants say set precedents for the assumption of planning permission, or the likelihood of planning permission in the future, for the reference land.

20. It is understandable that Mr and Mrs Taylor rely on the development of the golf club buildings, which was, as they say, a very short distance from the reference land. However, as Mr Church pointed out, the two were different. The officer's report to the planning committee noted that the background to the development stemmed back to the loss of a large area of the golf course owing to the scheme. Additionally, that 'the development proposed would provide housing of a form which is entirely acceptable for its position in the Green Belt'. Accordingly, this was a 'scheme world' development, and replacing the footprint of existing buildings. That is somewhat different to considering the value of the reference land in the no-scheme world, and upon which there are no existing buildings.

21. The land at 181 Woodford Road was adjacent to the entrance to the former golf course. Before the planning inspector, it was common ground that the saved policies of the Stockport UDP which dealt with development in the Green Belt were more restrictive that those in the NPPF or those in the Woodford Neighbourhood Plan 2018-2033 (2018) ("the WNP") and should therefore be afforded limited weight. The Inspector noted that while the NPPF did not define limited infilling (one of the exceptions under which development in the Green Belt might be deemed permissible), policy DEV1 of the WNP set out that limited infilling should comprise the completion of an otherwise continuous and largely uninterrupted built frontage of several dwellings visible within the street scene where the scale of development is compatible in character to the adjoining properties. The Inspector was satisfied that the development of the former golf club buildings - see above - had altered the nature of the entrance from that to a golf club to that to a residential development and was therefore satisfied that the development of the land at 181 Woodford Road amounted to permissible infilling.

22. As for the garden of 141 Woodford Road, the officer's report acknowledged that the lack of a five-year land supply tilted the balance in favour of residential development, as provided in paragraph 11 of the NPPF. The site was not in the Green Belt, and there were no adverse impacts of the development that would significantly and demonstrably outweigh the presumption in favour of development.

23. The development of 124A Woodford Road, where a bungalow was demolished and two houses built, was in a location identified by the planning officer as predominantly residential, and again the land was not in the Green Belt.

24. Turning next to the land to the north-east of Foden Lane, Woodford, the site lay behind houses on Moor Lane, and was accessed from Foden Lane, a minor road leading to Foden Farm and a house called Tall Trees. The planning inspector identified the main issues in the appeal to be whether the proposal would be inappropriate development in the Green Belt, having regard to development policy and the NPPF. The local plan policies were found to be out of date and therefore afforded little weight. As with 181 Woodford Road, the appeal turned on the inspector's finding that the development would be permissible "infilling" and would therefore be permissible under paragraph 89 of the NPPF. In my judgment the land is different in nature from the reference land. The Foden Lane site involved the development of land that was largely surrounded by other properties, whereas the reference land, in the no scheme world, was set some distance back, in the centre of the operating golf course.

25. Finally, the land between 510 and 518 Chester Road was again an infill site. The planning officer's report concluded, having regard to other decisions of the planning inspectorate, that

the proposed development constituted village infilling, and therefore acceptable development in the green belt.

26. Accordingly, all of the incidences of planning permission relied upon by the claimants are in respect of sites which are different, in planning terms, from the reference land. The parcels are very much in the Green Belt, and in the hypothetical circumstances required to be assumed for the purposes of assessing compensation, their development is highly unlikely to constitute limiting infilling, or indeed satisfy any of the exceptions outlined in paragraph 89 of the NPPF. Mr Bolton's view was that the area containing the reference land made a strong contribution to the Green Belt, and I agree.

27. Turning now to valuation evidence, the picture is sparse. The evidence which Mr Church relies upon, and which I largely accepted in *Budhathoki*, suggests nominal values. And yet, there is the Taylors' evidence that they bought with their eyes open, very much with the expectation that there would be some prospect of development in the future.

28. There are several missing pieces of the jigsaw. For instance, I have no evidence as to how the plots were originally marketed, or why. Mr Church says that the Golf Club was seeking to raise funds, but there is nothing before me as to whether there was any form of promotion agreement, or whether the purchasers of the plots received any rent from the Club – which would put the transaction outside the statutory basis of valuation.

29. In *Garner*, the Tribunal was satisfied that a prospective purchaser would include an element of hope value in his bid, although that was for grazing land some distance along the scheme road line. While the evidence before me now is slightly fuller than that available at *Budhathoki*, there is nothing to persuade me that the approach in that reference is incorrect. It is unnecessary to make an adjustment for size, and I therefore determine compensation at £600 for Mrs Taylor's land, and £1,200 for Mr Taylor's land.

30. Adding 7.5% for basic loss under section 33A of the Land Compensation Act 1973, I therefore determine compensation as follows:

Carolyn Taylor: £645

Martin Taylor: £1,290

Peter D McCrea FRICS FCIArb

27 May 2022

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.