

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2022] UKUT 00035 (LC)

UTLC Case Numbers: LC-2021-045,048,049,052

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION - COMPULSORY PURCHASE - road scheme - isolated plots - probability of owners induced to pay inflated values - lack of helpful comparable evidence - hope value in any event

IN THE MATTER OF FOUR NOTICES OF REFERENCE

BETWEEN:

SAMITA AND VINOD BUDHATHOKI (LC-2021-045)

MPANDE SIMUMBA (LC-2021-048)

ANNIE SIMUMBA (LC-2021-049)

JOHN YATES (DECEASED) (LC-2021-052)

Claimants

-and-

THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT

Acquiring Authority

Re: Land at Bolshaw Road, Cheadle

and at Woodford Road, Woodford

P D McCrea FRICS FCI Arb

DECISION BY WRITTEN REPRESENTATIONS

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Introduction

1.

This decision concerns four 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.

Despite the road having been in use for some years, title to the four plots had not been transferred, and in each case the acquiring authority made a reference 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](#).

3.

Samita and Vinod Budhathoki (the claimants in LC-2021-045) and Mpande and Annie Simumba, (LC-2021-048 and -049) failed to comply with the Tribunal's directions and were barred from taking further part in the proceedings under Rule 7(3) of The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. No applications for reinstatement were made. Mr John Yates was named as the claimant in reference LC-2021-52. Sadly, Mr Yates had passed away, and his daughters confirmed that they did not wish to take part in the proceedings. However, I have had regard to any submissions and statements that any of the claimants or their representatives made at earlier stages of the references.

4.

For the acquiring authority, written expert evidence was submitted by Sarah Everall MRICS, an Associate Director in the compulsory purchase team at CBRE.

Facts

5.

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.

6.

The claimants' holdings were as follows. Samita and Vinod Budhathoki owned 571 sqm of pastureland, known as plots 15, 16, and 17, Lot B, Bolshaw Road, Cheadle (CPO reference plot 8/25). Nearby, John Yates owned 194 sqm, known as plot 19 (CPO reference plot 8/27). A single plot, 8/26, separated the Budhathoki and Yates plots. The Budhathoki and Yates plots lie to the western end of the scheme, just south of the road line, but in a no scheme world would be in open countryside between Handforth and Heald Green. From the schedule to the CPO, it appears that much of the surrounding pastureland had been divided into small plots, configured in such a way to imply that they might at some point in the future form individual building plots

7.

Further to the east, Mpande and Annie Simumba each owned a small plot of 443 sqm which formed part of the former Woodford Golf Course. Mpande owned what was known as plot 21, Moor End, Woodford Road, Stockport (CPO reference Plots 5/23 and 5/23a); Annie owned plot 20 (Plots 5/18 and 5/18a). While the plots appear to have been in the middle of the course, there appears to have been some agreement between the Simumbas and the golf club, which I have not seen, so that golf continued. Again, the schedule to the CPO suggests that much of the golf course had been divided up into small plots.

8.

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 in respect of the Simumbas' plots, and 11 March 2015 in respect of the Budhathokis' and Mr Yates' plots.

Evidence

9.

In her helpful expert evidence, Ms Everall said that the plots were sold as offering development potential at figures between £10,000 and £30,000 per plot, depending on size. The Budhathokis bought their triple plot for £27,000 on 31 March 2011; the Simumbas each bought their plots at £12,000 on 25 June 2008; and Mr Yates bought his single plot on 27 April 2011 for £10,000.

10.

Ms Everall thought it likely that the claimants had been victims of a land banking scam, in which the owner of a larger parcel of land subdivides the land into smaller plots, which are sold off on an individual basis. Often the location of the plots is shown on a plan in such a way as to illustrate what appears to be a future residential development with a hypothetical access road. These individual plots are then offered to investors with the prospect of the site being allocated for residential development or obtaining planning permission for the land to be developed, thus increasing the value of the plots.

11.

Historically, these so-called land banking scams seemed to offer investors an opportunity to invest in a buoyant property market at a relatively modest outlay. Due to the relatively modest cost of the plots, many investors were cash purchasers and therefore did not obtain valuation or planning advice. The suggestions or promises that planning permission will be obtained for the reference lands and similar schemes have generally come to nothing. Consequently, many investors of these plots have been left as the owners of small plots of Green Belt land with virtually no prospect of ever obtaining planning permission.

12.

Ms Everall's suspicions seem to be correct: the late Mr Yates' daughters referred to their father being 'systematically defrauded by schemes such as the Stockport land purchase' and Mr Budhathoki made a similar suggestion in an early case management hearing.

13.

Be that as it may, for the purposes of these references it is necessary to value the reference lands at the valuation dates having regard to the statutory hypothesis and the compensation code. Ms Everall valued the plots under Rule 2 of [Section 5](#) of the [Land Compensation Act 1961](#), under which the value shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise. Any effect on value caused by the scheme is to be left out of account. At the valuation dates, the Budhathoki and Yates plots were pastureland, in planning terms allocated both as Green Belt and open countryside. The Simumba plot formed part of a golf course, allocated within the Green Belt and within a landscape character area.

14.

Ms Everall submitted details of 16 comparable sites, some of which were unsold and therefore were of very little assistance. They varied widely in terms of location and price achieved, from a nominal £10 or £50 for a single plot, to £10,000 for a plot of 0.05 acres, or 200 sqm. Several were in the order of £1,000 to £2,000.

15.

Ms Everall said that at the valuation dates, the reference plots could not be developed in isolation, as any developed would require the collaboration of a number of landowners. As for the purchase prices, she noted that the transactions pre-dated FSA investigations into land-banking investment scams and

a High Court case against what she called an illegal land firm, Asset Land, in 2016 (in fact the original decision of the High Court was in 2013 but this still post-dated the purchases by some years). She did not consider that the purchase prices reflected the market value at the valuation dates, and instead valued the reference plots as follows:

The Budhathokis' land (plots 15-17 Bolshaw Road) - 571 sqm - £1,500

The late Mr Yates' land (plot 19 Bolshaw Road - 194 sqm - £500

Mpande Simumba's land (plot 21 Woodford Road) - 443 sqm - £500

Annie Simumba's land (plot 20 Woodford Road) - 442 sqm - £500.

16.

To each of these she added a basic loss payment at 7.5%.

Discussion

17.

I found much of Ms Everall's evidence to be of assistance, particularly in explaining the background and assisting with finding facts. However, perhaps because the 'comparable' evidence was so disparate, there seemed to be little attempt to explain how the transactions, went to informing her view of value, or how those she regarded as 'key' differed from others.

18.

While an alternative starting point might be to take the prices paid for the individual plots by the claimants, several factors militate against their utility. First, while the values achieved might well have been in respect of arms' length transactions, it seems probable that the claimants were induced to pay values based on improbable promises of development in the short to medium term. Secondly, there is the passage of time between the dates of sale and the valuation date - nearly seven years in the case of the Simumba plots and four years in the others, and there is no evidence before me as to how land values changed during those periods. However, whilst conscious of these factors, I do not completely discount the purchase prices.

19.

We have four plots of land, none of which have planning permission for development, and indeed in locations where gaining planning permission would be, at the very least, challenging, but which have each been aligned in such a way as to suggest some form of development, however spurious, in the future. They are in two locations - first, in the middle of an operational golf course where the Simumbas bought their land in 2008; secondly within the pastureland where the Budhathokis and Mr Yates bought their land in 2011. Plots of this modest size do not easily render themselves to an analysis per acre, but for the purposes of assessing relativity between the two locations, and the valuation dates, the original purchase prices of the Woodford golf course plots equated to around £110,000 per acre, and the pastureland plots at an average of around £200,000 per acre.

20.

Ms Everall valued the plots at something approaching the same relativity between the two locations - £4,600 per acre for the golf course and around £10,500 per acre for the pastureland. In the absence of any evidence to the contrary, those seem to me to be reasonable existing use valuations. Where I depart from Ms Everall's view is in respect of the amount of hope value to be applied. Is it conceivable

that four different purchasers would all have paid values that were so inflated such that the market values, albeit some years later, were reduced by something in the order of a factor of 20?

21.

In my judgment, there would have remained an element of hope value at the valuation dates in the no scheme world. I hear what Ms Everall says about development being dependent upon all the adjacent owners being co-operative, but it seems to me that that was what they were all in the game for - the opportunity to cash in at some future date. These are not scenarios where a party owns a small rectangle of land in the middle of a landlocked area, where a single owner owns all the adjacent land. They are small plots adjacent to a series of other small plots purchased in the belief that something exciting would happen in the future.

22.

I take Ms Everall's figures, but I think she has undervalued the hope value element, so I add 20% to reflect hope value in each case, valuing the reference lands at £1,800 in the case of the Budhathokis' plot, and £600 in the case of the other three plots.

23.

Including additional compensation for basic loss at an additional 7.5%, I therefore determine compensation as follows:

Samita and Vinod Budhathoki: £1,935

Mpande Simumba: £645

Annie Simumba: £645

John Yates (deceased): £645

Peter D McCrea FRICSFCI Arb

10 February 2022