

UPPER TRIBUNAL (LANDS CHAMBER)



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UTLC Case Number: BNO/33/2020**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION - BLIGHT NOTICE – preliminary issue – whether blighted land – detached bungalow said by claimants to be blighted by proposed A5 by-pass – whether identified for the purposes of a relevant public function in a development plan document – Town and Country Planning Act 1990 section 151(4)(a)

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

**(1) ANDREW McEVOY
(2) JOANNE McEVOY**

Claimants

and

WARWICKSHIRE COUNTY COUNCIL

Respondent

**Re: Green Acres,
Watling Street,
Grendon,
Warwickshire,
CV9 2PY**

A J Trott FRICS

Determination on written representations

No cases are referred to in this decision.

PRELIMINARY ISSUE

Introduction

1. Mr Andrew McEvoy and Mrs Joanne McEvoy are the owners of a detached bungalow known as Green Acres, Watling Street, Grenton, Warwickshire CV9 2PY. On 24 October 2019 they served a blight notice on Warwickshire County Council (“the Council”) under section 150 of the Town and Country Planning Act 1990 (“the 1990 Act”) requiring the Council to purchase their freehold interest in the property.
2. On 18 December 2019 the Council served a counter-notice objecting to the blight notice on grounds (a), (c), (d) and (g) of section 151(4) and also under section 159(1) of the 1990 Act. Mr and Mrs McEvoy referred the Council’s objection to the Tribunal on 17 February 2020.
3. Mr and Mrs McEvoy are litigants in person. The Council are represented by its Legal Services, Governance and Policy Resources Directorate.

The preliminary issue

4. On 11 June 2020 the Tribunal ordered the Council’s objection under ground 151(4)(a) to be determined under the written representations procedure as a preliminary issue. This ground of objection is “that no part of the hereditament...to which the notice relates is comprised in blighted land.” If this ground of objection is upheld the blight notice will fail and there will be no need for the parties to adduce evidence in respect of the other grounds of objection.

Statutory provisions

5. It is a prerequisite to the service of a blight notice that the land to which it relates (whether in whole or in part) is “blighted land” (section 150(1) of the 1990 Act). “Blighted land” is defined in section 149(1) as “land falling within any paragraph of Schedule 13 (land affected by planning proposals of public authorities etc.)”.
6. Schedule 13 is divided into a number of parts which describe different ways in which land may be blighted. Paragraphs 1 to 6 of Schedule 13 are concerned with land allocated for public authority functions in development plans etc. Paragraphs 13 to 18 of the Schedule are concerned with land blighted by highway works. In their blight notice Mr and Mrs McEvoy rely upon paragraph 1A which includes:

“Land which is identified for the purposes of relevant public functions by a development plan document for the area in which the land is situated ...”
7. “Relevant public functions” are defined in Note (1) to paragraph 1A as including:

“(a) the functions of a government department, local authority, National Park authority or statutory undertakers.”

8. Note (2) to paragraph 1A provides, insofar as relevant to the current reference, that for the purposes of paragraph 1A “a development plan document” is:

“(c) a development plan document which has been submitted to the Secretary of State for independent examination under section 20(1) of the [Planning and Compulsory Purchase Act 2004 (“the 2004 Act”)];

(d) a revision of a development plan document in pursuance of section 26 of the 2004 Act if the document has been submitted to the Secretary of State for independent examination under section 20(1) of that Act.”

9. Note (2) specifies those types of development plan document that are included within paragraph 1A but it does not define what a development plan document is. For that it is necessary to look elsewhere in the 1990 and 2004 Acts.

10. Section 336 of the 1990 Act (as amended) says the expression “development plan” must be construed in accordance with section 38 of the 2004 Act. Section 38(3) of the 2004 Act states that for any area in England outside Greater London the development plan includes:

“(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area.”

Section 38(9) provides that a development plan document must be construed in accordance with section 37(3) which states:

“A development plan document is a local development document which is specified as a development plan document in the local development scheme.”

11. Section 37(2) of the 2004 Act says a local development document must be construed in accordance with sections 17 and 18(3) of that Act. Section 17(3) states:

“The local planning authority’s local development documents must (taken as a whole) set out the authority’s policies (however expressed) relating to the development and use of land in their area.”

Section 17(7) states that regulations may prescribe:

“(za)¹ which descriptions of documents are, or if prepared are, to be prepared as local development documents;

(a) which descriptions of local development documents are development plan documents...”

¹ Inserted by section 180(3) of the Planning Act 2008.

12. Regulation 5(1) of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”) defines for the purposes of section 17(7)(za) of the 2004 Act the documents which are to be prepared as local development documents:
 - (a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following –
 - (i) the development and use of land which the local planning authority wish to encourage during any specified period;
 - (ii) the allocation of sites for a particular type of development or use;
 - (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and
 - (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;
 - (b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document if it were adopted.”
13. The local development scheme must specify the local development documents which are to be development plan documents (section 15(2)(aa) of the 2004 Act). Every development plan document must be submitted by the local planning authority to the Secretary of State for independent examination.

The case for the claimants

14. Mr and Mrs McEvoy say Green Acres is blighted land because it is identified in the draft North Warwickshire Local Plan (“NWLP”) for the purposes of Phase 1 of the proposals to enhance the A5 by a new by-pass between Dordon and Grendon and the provision of a dual carriageway². This is a “core mitigation proposal” included in the plan for delivery in 2026. The proposal appears in the document entitled “Strategic Transport Assessment Modelling Analysis and Overview” published in October 2017 (“STA”).
15. The proposed line of route of the by-pass is shown in Figure 14 (2026 Mitigation Scheme Locations) of the STA. It is shown again in Figure 22 (2031 Local Plan Mitigation Schemes), which also shows as Scheme ID 15 a new southbound roundabout and additional road widening.
16. A subsequent document “A5 Growth Corridor Study 2031 Forecasting and Optioneering Report” published in October 2018, also shows the proposed enhancements to the A5 (this

² Scheme ID 5

time as scheme ID 3) in Table 4 and the line of route in Figures 4 (Core Mitigation Scheme Locations) and 5 (Additional Mitigation Scheme Locations).

17. The claimants also refer to document reference INSP 18 which is a letter dated 12 June 2019 from the Secretary of State’s Inspector regarding future examination progress and to correspondence between prospective purchasers of the plot adjoining Green Acres and Mr Richard Timothy of Highways England dated 30 July and 30 October 2019 in which Mr Timothy says the access and infrastructure works in connection with Site Allocation H7 in the NWBC Local Plan “are expected to have significant implications for the Greenacres site. There is also potential future use of compulsory purchase order powers.”

The case for the Council

18. The Council says the relevant paragraphs of Schedule 13 to the 1990 Act for the purposes of Highway Infrastructure works are paragraphs 13 to 18. It says the claimants have failed to demonstrate that their land falls within any of those paragraphs and therefore it cannot be blighted land.
19. The Council denies that Green Acres is identified for the purposes of relevant public functions by a development plan document (Schedule 13, paragraph 1A). It says the property does not form any part of the allocated sites for development detailed within the local plan. Furthermore, the Council says the purpose of the NWLP STA published in August (sic) 2017 is to model and assess potential impacts caused by the proposed allocated sites for development in the Local Plan and to establish options for highway interventions which will facilitate the delivery of the local plan proposals. The Council say the STA is not a development plan document for the purpose of Schedule 13 paragraph 1A. Further or alternatively, the document does not identify the claimants’ property as land identified for the purposes of relevant public functions.
20. The Council argues that there are three other reasons why Green Acres is not blighted land:
 - (i) all the plans are conceptual and no detailed assessment has been made of physical and environmental constraints. The extent and position of the A5 road scheme is subject to change. Until all the necessary preparatory work is undertaken there could be no assessment of what land will be required;
 - (ii) no decision has yet been taken on whether the Council or Highways England will deliver the scheme; and
 - (iii) although the level of funding for the scheme has been announced, because no decision has been taken on which body will deliver the scheme it has not been included in the Council’s Capital Programme or on Highways England’s programme of schemes.

Discussion

21. The claimants only rely upon paragraph 1A of Schedule 13 to the 1990 Act. The Council says that it is paragraphs 13 to 18 (highways) which are relevant in this instance and that none of these apply. Paragraph 13 states:

“Land indicated in a development plan (otherwise than by being dealt with in a manner mentioned in paragraph 1A) as –

- (a) land on which a highway is proposed to be constructed, or
- (b) land to be included in a highway as proposed to be improved or altered.”

The parenthetical exception indicates the claimants are not prevented from arguing that their land is blighted land under paragraph 1A simply because the cause of any blight involves proposed highways works.

22. In determining whether paragraph 1A applies three questions must be answered:
- (i) Is the land identified for the purposes of relevant public functions?
 - (ii) Are the documents upon which the claimants rely local development documents?
 - (iii) If the answer to (ii) is yes, are the local development documents specified as development plan documents in the local development scheme?

(i) Relevant public functions

23. The claimants’ land is said by them to have been identified twice in the October 2017 STA³ and twice again in the “Forecasting and Optioneering Report” dated October 2018 as being on the alignment of Phase 1 of the enhanced A5 proposals between Dordon and Grendon. I am satisfied that the claimants’ land is shown as being affected by, and on the alignment of, this scheme on Figures 14 and 22 of the 2017 STA and Figures 4 and 5 of the Forecasting and Optioneering report dated October 2018, albeit the figures are at a very small scale in the hard copy version of the documents.
24. I consider this scheme, which is described in the documents as a new by-pass, to be for the purposes of relevant public functions as defined in Note (1) to paragraph 1A of Schedule 13 to the 1990 Act.

(ii) Local development document

25. The October 2017 STA is a document prepared by Warwickshire County Council and North Warwickshire Borough Council in consultation with Highways England and described on its cover as “NWBC Local Plan”. It contains statements concerning the development and use of land which the local planning authority wish to encourage during

³ The date of this STA is stated to be October 2017 on the cover page but at the bottom of each page it says August 2017.

the period 2021-2026, i.e. Phase 1 of the enhanced A5 proposals for a new by-pass between Dordon and Grendon which are described in the executive summary as “core mitigation proposals” (Table 1). An alignment for the proposed road is shown in Figures 14 and 22. These are not diagrammatic plans but are shown on an Ordnance Survey base map, albeit at a small scale. The alignment goes through at least part of the claimants’ land. The October 2018 Forecasting and Optioneering Report shows similar plans affecting the claimants’ land at Figures 4 and 5. In the light of this evidence I find that the October 2017 STA is a local development document under regulation 5(1)(a)(i) of the 2012 Regulations.

(iii) Development plan document

26. Given that I have found the October 2017 STA to be a local development document, is it also a development plan document? Section 15(2)(aa) of the 2004 Act says that the local development scheme (“LDS”) must specify the local development documents which are to be development plan documents. The latest LDS for North Warwickshire is dated March 2018 and specifies the current adopted development plan documents. It also confirms the updated work programme for the preparation of the NWLP and describes the development plan documents to be produced as part of that process in Appendix A. The only development plan document specified in that appendix is the “North Warwickshire Local Plan”. For the purposes of paragraph 1A of Schedule 13 to the 1990 Act a development plan document includes one which has been submitted to the Secretary of State for independent examination. The NWLP was formally submitted to the Secretary of State for independent examination on 27 March 2018.
27. A substantial number of documents were included in the submission of the NWLP to the Secretary of State for examination. Further documents have been submitted subsequently. Document CD0/4 was the Infrastructure Delivery Plan, March 2018 (“IDP”). It is described in the Local Plan Examination Library as one of the “Local Plan evidence based documents submitted as part of [the] Local Plan for examination”. Paragraph 2.1 of the IDP states that:

“The production of an IDP is an essential part of the evidence base in developing and delivering a sound Local Plan.”

Paragraph 5.5 explains that:

“the IDP adopts a categorisation for each infrastructure item, to reflect its importance to the delivery of the Local Plan in terms of the level of risk it poses to the Local Plan.”

The three categories adopted are critical, necessary and preferred. Infrastructure which is identified as “critical” is that “without which development cannot commence”.

28. Appendix A to the IDP considers infrastructure details by topic. Under the “Road Network” topic for which the responsible delivery bodies are Highways England and Warwickshire County Council, the infrastructure requirements to support the delivery of the local plan are described as:

“Improvements to the highway network, especially the A5 will be crucial in facilitating the development included in the Local Plan ... Work has been undertaken by WCC and Highways England to identify what highway improvements will be required to support the delivery of the Local Plan. Improvements to the A5 will be subject to them being identified in the Road Infrastructure Strategy (RIS), with the next on[e] being RIS 2020-2025... Strategic Transport Assessment (STA) dated October 2017 gives more detail.”

29. The cost of the A5 works was given as £57.5m for the whole by-pass of which the Dordon to Grendon section was £28.75m (Appendix G).
30. The 2017 STA is one of the documents included in the Local Plan Examination Library (reference CD8/18A) and shows the new by-pass road between Dordon and Grendon as a core mitigation proposal (Table 1 and Figures 14 and 22). This proposal directly affects the claimants’ land as shown in the figures.
31. In the documents produced after 27 March 2018 as part of the examination of the Local Plan the planning inspector expressed concern at a potential funding shortfall: see document reference INSP 18 at paragraphs 2 to 7 and document reference INSP 20 paragraphs 12 to 14. In its response dated 22 July 2020 to document reference INSP 20, North Warwickshire Borough Council (document reference NWBC26) states:

“The critical piece of infrastructure for the overall strategy is the improvements to the A5 ... it is the A5 which is central to delivering the overall strategy of the plan.

The delivery of the A5 is critical because as stated in AD47 (A5 Dualling Summary Note) there is a limit of 800 dwellings which can be completed within the A5 corridor without substantial improvements to the strategic road. As you will recall the reason for the delay between your letter of October 2019 and our reply of February 2020 was due to awaiting the outcome of the HIF bid. This bid was for the completion of Phases 1 and 2 of the improvements to the A5. The funding of this scheme now lies with MHCLG who have committed funds of £79.5m to ensure that improvements as outlined in the HIF bid are carried out with further improvements to the A5 being part of RIS 3. This is great news and indicates the Government’s commitment to ensuring that the A5 is improved and to ensure the delivery of housing along the corridor.

We are working with Homes England, Highways England, Warwickshire County Council, Department of Transport and MHCLG on [a] detailed project delivery time line. It will be between 2024 and 2026. We are looking to agree a position statement/statement of common ground to show the commitment to the delivery of the A5 improvements, this will then inform the actual stepped trajectory to be applied to the Plan.”

Appendix A to the letter shows improvements to the A5 as being critical to the strategy at a cost now estimated at £79m.

32. Document AD47 is included in the Local Plan Examination Library as a post submission document and is a written statement from Warwickshire County Council dated March 2019 about the “NWBC Local Plan A5 Dualling Proposals”.
33. In Paragraph 2: Context it states:
- “WCC supported NWBC in the preparation of the transport evidence base for NWBC Local Plan including the production of a series of documents which focussed on the implications on the transport network arising from the delivery of the proposed housing and employment allocations identified within the NWBC(LP).
- The key infrastructure requirements to support the NWBC(LP) were identified through the STA October 2017 completed by Vectos Microsim on behalf of NWBC and WCC.
- The STA identified the key highway infrastructure measures considered necessary to support the delivery of the local plan proposals.
- Figure 1 shows land identified as an HIF scheme”.
34. I am satisfied from this analysis of the local plan documents for examination that the A5 Dordon and Grendon by-pass is a critical piece of infrastructure which is key to the delivery of the NWLP and that it is included in at least three development plan documents, namely CD0/4, CD8/18A and AD47. The by-pass is consistently shown as being aligned through the claimants’ land in the documents, including Figures 14 and 22 of document CD8/18A and Figure 1 of document AD47, all of which are Ordnance Survey based maps.
35. The Council argue that the A5 Dordon to Grendon by-pass works and the highway infrastructure works required to support housing development on site allocation H7 in the Local Plan is still at a very early stage. The current scheme drawings are said to be concept designs with significant work still required before a final road alignment is determined. But such arguments do not affect the question of fact whether the land has been identified in a development plan document. In my opinion that does not mean the land must necessarily be part of an allocated site for development as suggested by the Council.
36. For the reasons given above I have found that it has been so identified. Furthermore, the correspondence produced in evidence by the claimants shows that in July 2019 Mr Richard Timothy, Asset Manager for Coventry and Warwickshire for Highways England, stated in response to a potential purchaser’s enquiry:
- “While no detailed design work appears [to] have been published and the Draft Local Plan is still under examination by the inspector appointed by the Secretary of State, the necessary access and infrastructure works are expected to have significant implications for the Green Acres site.”
37. The plans contained in the development plan documents show a consistent line of route for the proposed A5 Dordon to Grendon by-pass. No alternative alignments are shown.

38. Nor is it relevant to the question of whether the claimant's land is blighted land that no decision has yet been taken on whether the Council or Highways England will deliver the scheme or that the question of funding has yet to be finalised.

Determination

39. In my judgment the whole or part of the claimants' property is comprised in blighted land under paragraph 1A of Schedule 13 to the 1990 Act and therefore the Council's objection under section 151(4)(a) is not well founded and fails.
40. Further directions under the written representations procedure for the determination of the remaining grounds of objection will now be issued.

Dated 26 October 2020

A J Trott FRICS

Member Upper Tribunal (Lands Chamber)