22 February 2017

PRESS SUMMARY

Homes and Communities Agency (Respondent) v J S Bloor (Wilmslow) Ltd (Appellant) [2017] UKSC 12
On appeal from [2015] EWCA Civ 540

JUSTICES: Lord Neuberger (President), Lord Clarke, Lord Sumption, Lord Carnwath, Lord Hughes

BACKGROUND TO THE APPEAL

This appeal concerns two parcels of grazing land one mile east of Rochdale, totalling 26.85 acres, formerly owned by the appellant and which were subject to compulsory acquisition under the North West Development Agency (Kingsway Business Park, Rochdale) Compulsory Purchase Order 2002 ("the CPO"). Responsibility for paying compensation to the appellant rests with the respondent ("the authority"), and for which the valuation date was 4 January 2006.

In 1999 developers published a "KBP Development Framework" in support of an application for planning permission, which included a master plan. Planning consents linked to the master plan were granted on 19 December 1999, and remained in force at the date when the parcels fell to be valued. The CPO was then made in 2002. The appellant acquired the land (and an additional adjacent parcel) for a total of £1.3m in May 2003 and its objection to the CPO was rejected, chiefly on the grounds that the land was required for the comprehensive development of the KBP scheme.

At the time the land came to be valued, the Statutory Development Plan in force comprised the regional guidance (RPG13) – which included the Kingsway Business Park as a 'strategic regional site' – and the Rochdale Unitary Development Plan ("the 1999 UDP").

The law on compensation for compulsory acquisition is found in the Land Compensation Act 1961 ("the 1961 Act"), with the general compensatory principle found in section 5, rule 2. Also relevant to calculating compensation in this appeal are the provisions on 'disregards' of actual or prospective development (section 6 and Schedule 1), and those on 'planning assumptions' (sections 14-16). These provisions operate alongside the *Pointe-Gourde* rule – or 'no-scheme' rule – that compensation is to be assessed disregarding any increase or decrease in value solely attributable to the underlying scheme of the acquiring authority.

The appellant made a claim for £2,593,000 compensation on the basis that the land had significant potential value for residential development, independent of the scheme of acquisition. The respondent, meanwhile, argued that the claim should be limited to the existing use value of approximately £50,000. The Upper Tribunal agreed with the appellant in part, awarding compensation of £746,000 on the basis that there would have been a 50/50 chance of planning permission being obtained in the 'no-KBP world'. On the authority's appeal, however, the Court of Appeal did not accept either party's argument, and remitted the issue for determination on an alternative basis that applied the s.6(1) disregard more widely.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Carnwath gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

The Court of Appeal's approach would seem to require disregarding not just the KBP scheme, but also all the policies – past and present – which supported development on this land **[35]**. The Upper Tribunal were clearly entitled to regard the underlying policies as potentially relevant to the prospect of development, apart from the KBP scheme. The assessment of their significance in the 'no-KBP world' was pre-eminently a matter for the tribunal, which properly took account of the pattern of development on the ground and the long history of identification of this land for development. Their approach did not ignore potential policy objections, and disclosed no error of law **[36]**.

The Court of Appeal was, however, correct to reject the submission that the tribunal should have treated the planning status of the land as conclusively fixed by reference to sections 14-16 of the 1961 Act. That the statutory assumptions are not exclusive is confirmed in section 14(3) of the 1961 Act, itself. They work only in favour of a claimant, and do not deprive him of the right to argue for prospective value under other provisions or the general law **[37]**.

It is well-established that the application of the *Pointe-Gourde* rule may result in changes to the assumed planning status of the subject land. Further, there is nothing in section 6 to indicate that a more restrictive approach should be applied under the statutory disregards: the tribunal did no more than emphasise the difference between the statutory tests when it stated that the two stages of the analysis should not be "elided" **[39]**.

It has also long been accepted that application of the general law may produce a result more favourable to a claimant than the statutory assumptions: the Law Commission has pointed to the two *Jelson* cases as an example of this, where the *Pointe-Gourde* rule permitted a broader view of the matter **[40]**.

It is hoped that the amendments currently before Parliament in the Neighbourhood Planning Bill will achieve their stated aim of "clarifying the principles and assumptions for the 'no-scheme' world". Overall, the tribunal's application of these complex provisions was exemplary; the appeal should be allowed and the award of the tribunal restored **[43-44]**.

References in square brackets are to paragraphs in the judgment