

UPPER TRIBUNAL (LANDS CHAMBER)



UTLC Case Nos: LC-2021-145, 146, 149, 150, 152

Royal Courts of Justice, Strand,
London WC2A 2LL

1 March 2023

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

IN THE MATTER OF FIVE NOTICES OF REFERENCE

COMPENSATION – PROCEDURE – owners of interests to be acquired unknown – whether service of notice to treat required – s.5 and Sch.2, Compulsory Purchase Act 1965

BETWEEN:

THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT

Applicant

-and-

THE UNKNOWN OWNERS OF:

- (1) 23 m² OF WOODLAND/PASTURE FORMING PART OF THE BED AND BANKS OF NORBURY BROOK, SOUTH OF OLD MILL LANE, HAZEL GROVE (Plot 2/8 in the Metropolitan Borough of Stockport (Hazel Grove (A6) to Manchester Airport A555 Classified Road) Compulsory Purchase Order 2013)
- (2) 1,781 m² OF WOODLAND/PASTURE FORMING PART OF THE BED AND BANKS OF NORBURY BROOK, SOUTH OF OLD MILL LANE, HAZEL GROVE (PLOT 2/11 of the same Order)
- (3) 576 m² WOODLAND/PASTURE FORMING PART OF THE BED AND BANKS OF NORBURY BROOK, SOUTH OF ALL MILL LANE, HAZEL GROVE, (PLOT 2/11A of the same Order)
- (4) 1 m² SQUARE METRE OF LAND WEST OF HIGHFIELD PARKWAY, BRAMHALL (PLOT 5/4A of the same Order)
- (5) 510 m² OF WOODLAND NORTH OF 151 WOODFORD ROAD, WOODFORD (PLOT 5/4 of the same Order)

Respondents

**Re: Land at Old Mill Lane,
Hazel Grove, Stockport**

Martin Rodger KC, Deputy Chamber President

1 March 2023

Michael Humphries KC, instructed by TLT LLP, Solicitors, for the applicant
The respondents were unrepresented and did not attend

© CROWN COPYRIGHT 2023

No cases are referred to in this decision

Introduction

1. These references raise an important practical point about the acquisition of land subject to compulsory purchase where the ownership of relevant interests in the land is unknown. The issue is whether an acquiring authority may pay into court the compensation determined by the Tribunal and complete the vesting of the land by deed poll where no notices to treat were served on the unknown owners or posted on or near the land.
2. The issue arises in this way.
3. Stockport Metropolitan Borough Council (the Acquiring Authority) is entitled by The Metropolitan Borough of Stockport (Hazel Grove (A6) To Manchester Airport A555 Classified Road) Compulsory Purchase Order 2013 ('the Order') to acquire land at Hazel Grove to facilitate the provision of a new relief road linking the A6 to Manchester Airport. It has been unable to identify the owners of five small parcels of land varying in size from 1 m² to 1,781 m² along the route of the road. That did not prevent it from entering on the land in March 2015 and completing the construction of the new road by 2018.
4. In these references the Acquiring Authority has already obtained a determination from the Tribunal under Schedule 2 to the Compulsory Purchase Act 1965 of the amount of compensation payable for each of the five parcels of land. The final step before completing its acquisition is for it to pay that compensation into court. It will then be lawful for it to execute a deed poll vesting in itself absolutely all the estate and interests in the land belonging to the unknown owners.
5. The Acquiring Authority's solicitors have tried to pay the compensation into court, but the deposit request form published by the Court Funds Office requires that they state the date on which notice to treat was given. In these cases no notice to treat has been given in relation to any of the five parcels of land. The Court Funds Office has declined to accept the deposits and has returned the money to the Acquiring Authority on the basis that the statutory procedural requirements have not been complied with. It has suggested that the Acquiring Authority seek a further direction from the Tribunal to allow for the deposits to be made.
6. When it first approached the Tribunal seeking its further assistance the Acquiring Authority assumed that a mistake had been made and suggested that the Tribunal had power under its procedure Rules to correct it. A hearing was arranged to enable that proposition to be considered. In the event, Mr Michael Humphries KC, who appeared for the Acquiring Authority at that hearing, took a different approach and explained why no notices to treat were required in these cases and why the Acquiring Authority is entitled to pay the compensation into court without having served any.

The relevant statutory procedures

7. The Acquisition of Land Act 1981 (the 1981 Act) prescribes the procedure for the compulsory purchase of land to be authorised by an order called a compulsory purchase order (CPO). Where the purchase is to be by an authority other than a Minister a three-

stage procedure is laid down by s. 2(2): the CPO must be made by the acquiring authority, submitted to a confirming authority, and confirmed in accordance with Part 2 of the 1981 Act.

8. Before submitting a CPO for confirmation an acquiring authority is required to publicise it to those who have an interest in the land to be acquired and to explain what it involves and how it may be objected to. Notices must be published in local newspapers (s.11, 1981 Act) and given individually to every “qualifying person” in relation to the land (s.12(1)). The expression “qualifying person” is defined in s.12(2) as including an owner, lessee, tenant or occupier of the land. No exception is made for qualifying persons whose identity is unknown, so notice must also be given to them.
9. Provision for service of documents is made by s.6, 1981 Act, and includes specific measures for service on unknown owners, at s.6(4):

“(4) If the authority or Minister having jurisdiction to make the order in connection with which the document is to be served is satisfied that reasonable inquiry has been made and that it is not practicable to ascertain the name or address of an owner, lessee, tenant or occupier of land on whom any such document as aforesaid is to be served, the document may be served by addressing it to him by the description of “Owner” “lessee”, “tenant” or “occupier” of the land (describing it) to which it relates, and by delivering it to some person on the land or, if there is no person on the land to whom it may be delivered, by leaving it or a copy of it on or near the land: ...”
10. Once a CPO has been confirmed, the acquiring authority is required by s.15, 1981 Act, to serve a confirmation notice and a copy of the order on all those who were required to be served under s.12. Additionally, a confirmation notice must be affixed to a conspicuous object or objects on or near the land comprised in the order and published in local newspapers. Once these steps have been taken the acquiring authority becomes authorised to acquire the land comprised in the CPO.
11. As can be seen, the statutory procedure requires every owner to be given notice both before and after confirmation of a CPO takes place. Where the acquiring authority is satisfied that reasonable inquiry has been made and that it is not practicable to ascertain the name or address of an owner, the necessary notices may be given to anyone on the land or by leaving it on or near the land. Notice of the confirmed CPO must also be given on or near the land.
12. Each of these steps was taken in this case in respect of each of the five parcels of land.
13. Once compulsory purchase has been authorised, the statutory procedures focus on the terms of acquisition, including the agreement or determination of the amount of compensation payable, and the completion of the acquisition. These are dealt with in Part 1 of the Compulsory Purchase Act 1965 (the 1965 Act).
14. As its heading indicates, s.5 of the 1965 Act deals with two distinct matters, “Notice to treat, and untraced owners.” The greater part of the section (subsections (1) to (2E)) is

concerned with notices to treat. Subsection 3 then introduces Schedule 2, which relates to absent or untraced owners. So far as material, s.5 provides as follows:

“(1) When the acquiring authority require to purchase any of the land subject to compulsory purchase, they shall give notice (hereafter in this Act referred to as a “notice to treat”) to all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.

...

(3) Schedule 2 to this Act (which relates to absent or untraced owners) shall have effect for the purposes of this Act.”

15. It is important to note that in s.5(1) the requirement to give a notice to treat to persons interested in the land applies only so far as such persons are “known to the acquiring authority after making diligent inquiry”. There is therefore no requirement to give notice to such persons if they are not known to the acquiring authority after it has made diligent inquiry. This qualification is a critical difference between the procedures for securing a CPO under the 1981 Act and those concerned with the completion of acquisition under the 1965 Act.
16. That distinction is not eroded by s.30 of the 1965 Act, which incorporates the provisions for serving notices found in s.6 of the 1981 Act (including s. 6(4) dealing with owners whose name or address cannot be ascertained). Those provisions create no obligation to give a notice to anyone; instead they are concerned with the method of service of notices. That is apparent from the opening words of s.6(1) (which is concerned with service by post), “Any notice or other document required or authorised to be served under this Act may be served on any person ...”. The reference in s.6(4) to serving “any such document as aforesaid” relates back to those documents described in s.6(1) as required or authorised to be served.
17. It follows that no notice to treat is required to be served on an owner of land whose identity is unknown, nor must any such notice be posted on or near the land. Such a notice is only required to be given to those whose identity is known. That can hardly be a surprise. The purpose of a notice to treat is to invite the owner to participate in a negotiation. If the owner of the land has not come forward during the CPO confirmation process, despite the steps taken to bring it to their attention, and if they have not been identified despite the “diligent inquiry” required by s.5(1), such an invitation would be an empty gesture.
18. As foreshadowed in s.5(3), the procedure to be followed in the case of absent and untraced owners is specified in Schedule 2, 1965 Act. It does not involve service of a notice to treat. Paragraph 1 of Schedule 2 provides that:

“(1) The compensation to be paid for any land subject to compulsory purchase to be purchased by the acquiring authority –

(a) from a person who is prevented from treating with them on account of absence from the United Kingdom, or

(b) from a person who cannot be found after diligent inquiry has been made,

and the compensation to be paid for any permanent injury to any such land, shall be determined by the valuation of a surveyor selected from the members of the Upper Tribunal who are members or fellows of the Royal Institution of Chartered Surveyors.”

Paragraph 1 confers jurisdiction on the Tribunal to determine compensation payable to those falling within sub-paragraphs (a) and (b). It is for the Tribunal to satisfy itself that those prior conditions are satisfied and that it has jurisdiction. Sub-paragraph (a) is a reminder that the compensation code pre-dates modern methods of communication; sub-paragraph (b) is much more commonly used and requires that the Tribunal be satisfied that the owner of the land cannot be found after diligent inquiry has been made. For that reason, the Tribunal’s standard “absent owner” form of reference requires an acquiring authority to provide a detailed list of steps taken to locate the owner of the land, including when they were taken and their outcome. That information was provided by the Acquiring Authority in these cases and was sufficient to satisfy the Tribunal that it should proceed to value the compensation payable for each of the five parcels of land concerned. Having done so, the Tribunal’s valuations were issued to the Acquiring Authority.

19. Once a valuation has been completed and the amount of compensation payable has been ascertained, the only further steps which remain to be taken are administrative. That is apparent from paragraph 2 to Schedule 2, 1965 Act, which provides as follows:

“(1) The acquiring authority may pay into court the compensation determined under this Schedule to be placed to the credit of the parties interested in the land, giving their descriptions so far as the acquiring authority is in a position to do so.

(2) When the acquiring authority have paid into court the compensation, it shall be lawful for them to execute a deed poll containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under which, and the names of the parties to whose credit, the payment into court was made.

(3) On execution of the deed poll all the estate and interest in the land of the parties for whose use and in respect whereof the compensation was paid into court shall vest absolutely in the acquiring authority, and as against those persons the acquiring authority shall be entitled to immediate possession of the land.”

20. The only passport an acquiring authority requires to enable it to complete its acquisition is the Tribunal’s valuation. Once it has that document the authority has an entitlement under paragraph 2(1) to pay the compensation into court. Having done so, it has a right under paragraph 2(2) to execute the necessary deed poll, with the consequences identified in paragraph 2(3). None of those rights or consequences depend on any further judicial or administrative determination.

Conclusion and relief

21. It follows from this survey of the relevant statutory provisions that the compensation code does not require an authority to serve notice to treat where it is unable to identify the owner of land subject to compulsory purchase.
22. I should add that there are circumstances in which an acquiring authority may need to pay compensation into court despite knowing the identity of the owner of the land it wishes to acquire. Specifically, s.9, 1965 Act, provides for an authority to pay the compensation into court where the owner has refused to accept it, or has failed to make out its title to the land. In such cases a notice to treat will usually have been served, but those are not the circumstances of these references.
23. Mr Humphries KC requested that the Tribunal make a further direction confirming that the compensation it has previously determined may be paid into Court notwithstanding no notices to treat (or notices of entry) have previously been served, and that the Acquiring Authority may then execute a deed poll in respect of each of the five parcels of land transferring title to itself. Those are simply the consequences of the statutory scheme, as I have explained them, but as the Court Funds Office has requested the comfort of a further direction from the Tribunal to allow the necessary deposits to be made, I am happy to make the order proposed.

Martin Rodger KC,
Deputy Chamber President
1 March 2023

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.