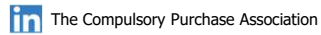
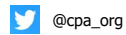


CPA Scotland Training

Monday 27th November 2023

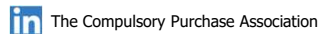


The meeting begins at 4.00pm

03:38:29

CPA Scotland Training

Monday 27th November 2023





Compulsory Purchase Association Scotland

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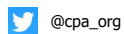
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Compulsory Purchase Association Scotland

Welcome and Introduction from the CPA Scotland Chair

Elaine Farquharson-Black, Brodies LLP



@cpa_org



The Compulsory Purchase Association

SCOTTISH COMPULSORY PURCHASE ASSOCIATION

Certificates of Appropriate Alternative
Development

Elaine Farquharson-Black, Partner, Brodies LLP

Karen Hamilton, Partner, Brodies LLP

Dougie Bowers, Head of CPO guidance, Valuation Office
Agency

Rob McIntosh, Principal Solicitor, Aberdeenshire Council



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CERTIFICATES OF APPROPRIATE ALTERNATIVE DEVELOPMENT

A Legal View

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CAADS AND DEVELOPMENT POTENTIAL

Question: How do you establish development potential in the absence of planning permission for your site?



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CAADS AND DEVELOPMENT POTENTIAL

Answer: Planning assumptions
- Land Compensation (Scotland) Act 1963, ss22 -24



Development Plan Assumptions (s. 22, 24)

Assume planning permission for relevant development / use where:

- Relevant land (or part) is “defined” in Dev Plan for a proposed development of specified purpose (*David Lowe and Sons v Musselburgh Town Council 1973 S.C. 130* re meaning of defined)
- Relevant land (or part) is “allocated” primarily for a use specified in Dev Plan and PP reasonably likely to have been granted*
- Relevant land (or part) is “allocated” primarily for 2 or more uses specified in Dev Plan and PP reasonably likely to have been granted for one such use*
- Relevant land (or part) is subject to comprehensive development and PP reasonably likely to have been granted for any development for purposes of a use falling within the planned range of uses and according with the proposals in Dev Plan* (and assuming no land in area already developed for the comprehensive redevelopment)

(*also assume that no part of relevant land were proposed to be acquired compulsorily)

Non- Development Plan Assumptions

Assume planning permission for:

- Proposed scheme on the relevant land (s.22, 23(1))
- Any development identified in a CAAD as appropriate if relevant land were not being acquired (s. 22, 23(5))



LCSA 1963, s.22(5)-(7)

If:

- The relevant land is being acquired to provide /alter / improve a public road or
- Such use is being considered by the acquiring authority then:

When determining a CAAD application or considering if planning permission might reasonably have been expected to be granted under the development assumptions:

- It must be assumed that if the relevant land was not being so acquired, no public road* would be provided, altered or improved to meet the same (or substantially) same) need as would have been met by that road

*Public road means construction or provision of a road by the exercise of compulsory purchase powers (*Re: Section 14(5)(D) of the Land Compensation Act 1961 [2018] UKUT 62 (LC)*)

How CAADs work:

- Application to planning authority
- Right of appeal to Scottish Ministers – 1 month time limit

Positive certificate:

- planning permission would have been granted for development of one or more classes specified in the certificate (whether specified in the application or not)
- Specify any planning permission conditions

Negative certificate

- No planning permission would have been granted

Example of positive certificate (1)

- (a) Non-food retail development approx 8,360 sq m gross floor area, a petrol filling station, a restaurant and car parking.
- (b) Leisure development within classes 3 and 16, including cinema, bowling/family entertainment centre, restaurant approx 10,800 sqm gross floor area and car parking.
- (c) Industrial/warehousing development within classes 4,5 and 11 approx. 9,755 sqm gross floor area.

South Lanarkshire Council v Lord Advocate 2002 S.C. 88

Example of positive certificate (2)

Conditions, including:

'The development hereby approved shall not commence until details of the junction between the proposed access and Farmeloan Road have been approved by the local authority, and the development shall not be occupied until that junction has been constructed and until all agreed road works and improvements at Rutherglen Cross have also been completed in accordance with the approved details.'

Application

- By claimant or acquiring authority
- No prescribed form
- Specify classes of development appropriate for the site, and justification
- Now or in the future
- Serve copy on the other party directly concerned in the acquisition

Determination – relevant date:

- Section 30(2) - date of publication of the notice of making of the CPO
- But includes consideration of grant at future date
- Not date of entry



Does not tell us:

- The position at the valuation date (see Spierose case)
- The planning position for retained land



“No scheme world” complexities –
cancellation principle

“It is one thing to examine these factors, on the assumption that the proposal has been cancelled on the relevant date, in the light of existing circumstances. It is quite another to look back into the past and to try to reconstruct the planning history of the area on the assumption that the proposal had never come into existence at all. The further back in time one goes, the more likely it is that one assumption as to what would have happened must follow on another and the more difficult it is likely to be to reach a conclusion in which anybody can have confidence.”

Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment [2000] 2 AC 307

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Reality principle -

“There is another fundamental principle of valuation which must also be given effect. That is the principle, often referred to as the reality principle, which requires the valuation to take place against the background of the real world, except in so far as specified hypotheses (which may be statutory or contractual) otherwise require.”

Secretary of State for Transport v Curzon Park Limited [2021] EWCA Civ 651

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CAAD

No scheme world - example:

- Planning applications for retail development of two other sites grew out of a situation where planning permission had been granted for the M74 Extension
- Assumption must be that these applications would have been before the Secretary of State, but the M74 extension would have been cancelled on the relevant date.

South Lanarkshire Council v Lord Advocate 2002 S.C. 88

Secretary of State for Transport v Curzon Park Ltd and others [2023] UKSC 30

- HS2, Ph. 1 railway terminus
- 4 neighbouring sites in Birmingham
- Each site granted a CAAD on different dates for own site for MXD, including PBSA
- Resulted in excess of student accommodation provision
- Should a CAAD be treated as a planning permission / material consideration to be considered in the determination of a later CAAD application? **No.**
- But a CAAD decision and the material available in a CAAD application might be taken into account to limited degree in allowing the Tribunal to understand the market / likely approach of developers at the relevant time.

[But treat with some caution due to differences in English CAAD provisions]

SPIREROSE LIMITED V.
TRANSPORT FOR LONDON

- TWO served 1993
- Negative CAAD granted
- Development potential still claimed at valuation date in 2001
- Planning policy landscape more favourable by then
- Probable PP (more than likely) ≠ assumption of PP
- Hope value at valuation date assessed at ~ 60% of full development value

[2009] 1 W.L.R. 1797

GREENWEB LIMITED V
WANDSWORTH LBC

- Area of open space acquired
- Former Victorian terraced housing demolished before 1st July 1948
- Purchase notice
- Deemed notice to treat
- LCA 1961 (E&W) ss. 14, 15 – statutory assumptions
- Schedule 3 cases
- PP to be assumed for rebuilding of terraced housing
- Compensation assessed at £1,600,000
- Compared with Market Value of £15,000
- Lead to change in legislation in E&W

[2008] EWCA Civ 910

Example 1 – Field 52

- Part of Aberdeen Western Peripheral Route (AWPR)
- Negative CAAD
- But 5½ years between CAAD date and valuation date
- So valuers left to debate “hope value” and were a long way apart!

David Strang Steel and Richard Strang Steel v Scottish Ministers
LTS/COMP/2013/12

Example 2 – Plot 518 – Edinburgh Tram

- Planners said no development
- CAAD appeal said in NSW land would have formed part of development site
- But plot 518 only suitable for parking – what was the impact on the value of the retained land?
- Retained land developed for offices

BAM Properties Ltd and HBG Haymarket 3 Ltd v City of Edinburgh
Council LTS/COMP/2013/06

Example 3 – Queensferry Crossing

- Temporary occupation (Bill rather than CPO)
- Lengthy process concluded CAAD not appropriate for temporary occupation
- Established principle but otherwise limited value (in my view)
- Land acquired and land retained were clearly zoned in LDP
- Compensation agreed without reference to CAAD decisions

<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=117241>

Example 4 – Countesswells, Aberdeen

- Compensation for a wayleaves for an overhead transmission line passing through a substantial area zoned for development.
- Compensation claimed for the value of the land sterilised by the OHL and injurious affection for the neighbouring land.

“[171] ...It is unfortunate that there is no CAAD process available for cases such as the present. Such a process could have been used to go into much more detail as to what scale of development would in fact have been permitted in a no-scheme world...”

<http://www.lands-tribunal-scotland.org.uk/decisions/LTS.COMP.2019.42.html>

Example 5 – Christies of Scotland Limited v Scottish Ministers

- A96 Trunk Road (Fochabers and Mosstodloch Bypass)
- Compensation for land acquired.
- CAAD applied for based upon potential residential use..
- Residential use rejected but positive CAAD for holiday accommodation

<http://www.lands-tribunal-scotland.org.uk/decisions/LTS.COMP.2019.42.html>

Pros and Cons

- If land is zoned will a CAAD give any extra weight
- If CAAD is negative would it be better for applicant NOT to have one?
- If lack of supporting information still difficult for valuers to agree
- Time between CAAD date and valuation date is a problem
- Note differences between E&W and Scotland

What are your thoughts?

CERTIFICATES OF APPROPRIATE ALTERNATIVE DEVELOPMENT

A Local Authority View



LOCAL AUTHORITIES & CAADS

- CAAD -
- A what ?
- Who ?
- How ?
- Aberdeenshire Examples
- Scottish Guidance – (CAAD) associated with Compulsory Purchase Orders
- <https://www.gov.scot/publications/compulsory-purchase-order-caad-guidance/>

WHAT & WHO ?

- Is it a Planning Application ?
- Who - Role of the Planner
- Assessing the application – Officer Conflict ?
- Route for Determining application ? Scheme of governance

WHAT

- What are we assessing – No prescribed form - validation
- No Fees
- not a lot ?
- The type(s) and scale of development or land use(s) number/density and type of housing or the size of commercial building that would be appropriate immediately or at a specified time in the future; and
- The grounds on which that the alternative development(s)/use(s) are appropriate.
- Onus on Applicant
- Positive and negative - Nil certificate

NO SCHEME WORLD

- Ignore everything related to the CPO ? All matters contrary to the relevant development plan where the development plan(s) earmark the land in question for a particular public purpose related to the CPO scheme
- Any policies within the relevant development plan (extant at the relevant date) relating to the CPO or the need for it to be ignored.
- Developer Obligation Implications - Include in the CADD ?
- Lothian Regional Council v West Lothian District Council (Ref P/AAC/LD/1), CPO for School -the planning authority did not have to consider where the school might have been located if it was not to be located on the CAAD site – rather, the authority could assume that a school site would be provided – Step too far ?
- conditions

WHEN & HOW– EXERCISE IN TIME TRAVEL

- RELEVANT DATE FOR DETERMINING THE APPLICATIONS
- Development Plan(s) at the relevant date
- Any other relevant policies in the development plan , such as for example, e.g open space provision sustainable transport would, are still relevant and should be taken into account.
- National planning policy - pre NPF4
- Normal Material considerations be considered
- Any relevant foreseeable development plan policies (such as Master Plans, or emerging LDP
- Exercise in judgement

FORM OF CAAD DECISION

- No style/ form
- State either positive or negative or combination both
- specify conditions –
- Timescales - within two months from the date receipt of the application **and all the required associated information** (or such extended period as may be agreed with the applicant in writing).
- Appeal - non determination or 1 month receipt of decision
- Who- Acquiring authority & landowner
- Scottish Ministers will consider any CAAD appeal and then decide whether to:
- Confirm the CAAD;
- Vary the CAAD;
- Cancel the CAAD; or
- Cancel the CAAD and issue a different CAAD in its place.

EXAMPLES

- Aberdeenshire - Practical examples 3 CAAD's in 14 years
- 2/3 – Successfully Appealed
- Field 52
- Education acts CPO's - APP/2015/3117 Residential Development Caskieben Blackburn
- Midmill Primary School, Kintore: Residential Development - APP/2021/0356 (Plot 4) and APP/2021/0357 (Plot 5)
- Committee decisions - decision makers treat them as real application with real implications
- Expenses Awards

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QUESTIONS / DISCUSSION

SCOTTISH COMPULSORY PURCHASE ASSOCIATION

Dealing with CAADs

Karen Hamilton, Partner, Brodies LLP
Dougie Bowers, Head of CPO guidance, VOA
Rob McIntosh, Principal Solicitor, Aberdeenshire Council





Compulsory Purchase Association Scotland

Thank you for attending today's event.

We look forward to welcoming you back to our next event, very soon!

In the upcoming days, you will receive a email which will include your post-event documentation. This email will include the following: CPD, online Questionnaire and a link to the event recording.



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We look forward to seeing you very soon!

This event has now finished.



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