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Compensation for Airport Works

The Sky Is Not the Limit

The Upper Tribunal (Lands Chamber) decision in *Heath Colin Alridge & Others v London Southend Airport Company Limited* [2021] UKUT 0008 (LC) (LSA Case) provides welcome clarity on the approach to assessing compensation under Part 1 of the Land Compensation Act 1973 in relation to a runway extension and other airport infrastructure works.

Part 1 Claims – Airport Works

Under Part 1 of the Land Compensation Act 1973 (LCA 1973), qualifying owners and occupiers of residential (and some agricultural and smaller commercial) interests in land, are entitled to claim compensation where certain new infrastructure works, or alterations to existing airport infrastructure, are brought into use, including the extension of existing runways or the addition of new taxiways or aprons.

Compensation is payable where the use of the relevant airport works (including anticipated intensification of use in the future), causes an increase in one or more "physical factors", including noise, vibration, smell, fumes, smoke and artificial lighting, and discharges on to land, that results in a depreciation in the value of the claim property.

The Tribunal's latest decision in the LCA case provides welcome guidance on the approach to assessing compensation in airport Part 1 claims, including two key issues:

(i) **Physical factors** – The approach to assessment of noise as a physical factor and relevant thresholds triggering the entitlement to compensation.

(ii) **Valuation** – Valuation methodology for the assessment of the depreciation in value of claim properties.

Facts

On 8 March 2012, an extension to the existing runway at London Southend Airport was opened, enabling the airport to attract low-cost commercial airlines operating larger aircraft.

Following the works, approximately 300 residential property owners in the vicinity of the airport submitted claims for compensation under Part 1 of the LCA 1973, alleging that the runway extension works had caused an increase in noise levels, primarily from the use of larger aircraft, which had led directly to a reduction in value of the claim properties.

The Tribunal proceedings were commenced in the Tribunal in March 2019, with 10 representative "lead claims" taken forward to trial in October 2020, to determine the correct approach to be adopted when assessing noise and valuation matters Part 1 claims.

The LSA Case

Noise as a Physical Factor

Under the 1973 Act, it is only changes in noise resulting from the relevant works, in this case the runway extension, that fall to be assessed, not changes in noise from the use of the airport as a whole for any other unrelated reason. In applying the relevant test under Part 1 of the 1973 Act, the Tribunal was concerned with determining the change in noise levels (if any) resulting from the bringing into use of the runway extension.

The Tribunal considered technical expert noise evidence from the parties assessing the impact of the bringing into use of the runway extension on daytime and nighttime noise levels.

The Tribunal endorsed the use of technical noise metrics in assessing changes in noise levels, in particular:

- **Daytime noise** – LAeq, 16h index for measuring aircraft noise for daytime flights between 7 a.m. and 11 p.m.
- **Nighttime noise** – Lnight index used for nighttime noise between 11 p.m. and 7 a.m., being the approach adopted by both parties' noise experts.

The Tribunal noted the LAeq index was a "composite index of environmental noise taking into account the number of aircraft noise events, their noise level and duration." Having regard to the indexes, the Tribunal found that "the general impression created by the daytime noise data is that between 2011 and 2014 what was already quite a noisy environment got noisier".

Diminution in Value

Under the Act, the amount of any compensation is assessed having regard to property values at the "first claim day", being the date one year and one day after the "relevant date" that the works were first brought into use. In the LSA case, the first claim day was 8 March 2013.

The Tribunal focused on determining how the change in noise levels resulting from the use of the runway extension affected the market value of the lead claim properties assessed at that date.

The Tribunal endorsed the principle of assessing the depreciation in value of the lead claim properties having regard to the values with and without the runway extension being in use, known as "switched on" and "switched off" values, where:

- **"Switched on" values** – Means with the runway extension built and in use.
- **"Switched off" values** – Means with the runway extension built but not in use.

The Tribunal held that the "switched on" values were the mid-point values between the parties' experts' respective valuations.

In determining the "switched off" values, the Tribunal rejected the claimants' experts use of "repeat sales test" based on analysis of repeat sales of matching pairs of properties, one affected, one unaffected by the use of the runway extension. The Tribunal also rejected the airports' valuation expert approach of applying indexing to pre- and post-first claim day prices, resulting in none of the properties having experienced depreciation in value, as during cross-examination, the expert had conceded that "at least some of the properties had been depreciated."

The Tribunal instead adopted an approach of assessing the amount of "growth foregone" (being the difference between the "switched on" and "switched off" values of the lead claim properties) by reference to a "sliding scale", depending on the increase in noise level at each lead claim property.

In summarising its approach to assessing diminution in value, the Tribunal concluded that, "Having considered the evidence, we think the maximum level of growth foregone will be 8.5%, which will apply where the combined increase in daytime and nighttime noise is above 10dB, the largest figure being 12dB. Taking a robust approach based on all the evidence, we think the level of growth foregone will reduce to 7.5% at a combined increase of 10dB and pro rata thereafter (by 1% for every dB below 10dB) to 0.5% at a combined increase in noise levels of 3dB."

The Tribunal went further and held that any change in noise levels of less than 3dB would not be compensatable as any such changes were "minimal". This element of the decision is likely to be significant for airport operators bringing forward future airport expansion plans in assessing the impact of changes in noise levels on potential future compensation liabilities under the 1973 Act.

Finally, the Tribunal determined that any compensation for "intensification" of the use of the runway extension had to be reflected in the value of the claim properties at the first claim day. If no loss could be shown to have been suffered as at that date, then the 1973 Act did not allow a separate sum to be awarded in respect of potential future loss.

Commentary

Reflecting on the decision, David Holland, partner and head of our specialist CPO and Land Compensation team commented:

> "The rules governing compensation in relation to airport works under Part 1 of the 1973 Act are complex and in our long experience of acting for airport operators in many similar cases, often give rise to disagreement.
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> "The Tribunal's decision in the *London Southend Airport* case provides clear direction on the approach to determining compensation in airport Part 1 claims. Of particular note is the Tribunal's endorsement of the technical approach to assessing changes in noise levels, including the 'benchmark' of 3dB change in noise levels as the minimum compensatable threshold, and the Tribunal's adoption of a 'sliding scale' approach to assessing diminution in value.
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> "This is an important case with potential implications for the assessment of Part 1 compensation claims in relation to all future airport expansion projects."

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