

UPPER TRIBUNAL (LANDS CHAMBER)



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Birmingham Civil Justice Centre

22 August 2022

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – LAND COMPENSATION ACT 1973 PART 1 – runway extension at Birmingham Airport – Compensation determined at £75,000

IN THE MATTER OF A NOTICE OF REFERENCE
UNDER PART 1 OF THE LAND COMPENSATION ACT 1973

BETWEEN:

ANDREW BENNETT

Claimant

-and-

BIRMINGHAM AIRPORT LIMITED

Respondent

Re: Oak Tree Lodge
Shadow Brook Lane
Hampton-in -Arden
Warwickshire
B92 0DL

Mr P D McCrea FRICS FCI Arb

Heard on: 5-7 April 2022

Barry Denyer-Green, instructed by Barlow Associates Limited, for the appellant
Caroline Daly, instructed by Squire Patton Boggs, for the respondent

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The following cases are referred to in this decision:

Aldridge v London Southend Airport Company Limited [2021] 008 (LC)

Mann & Ors v Transport for London [2016] UKUT 1026 (LC)

King v Dorset County Council [1997] 1 EGLR 245

Robertson and Spark v Manchester Airport plc [2010] UKUT 370 (LC)

Russell v Transport for London [2020] UKUT 0281 (LC)

Introduction

1. This is a claim under Part 1 of the Land Compensation Act 1973 (“the Act”) by Mr Andrew Bennett, who lives near Birmingham Airport. Planning permission for an extension to the airport runway and associated work was granted in November 2009, and the runway was first used in its extended form in February 2014. Mr Bennett says that the use of the extension resulted in increased noise at his house, Oak Tree Lodge, and he claims compensation because he says the value of his property has been depreciated. The respondent, Birmingham Airport Limited, dispute this and say his claim should be dismissed.
2. I heard the claim at Birmingham Civil Justice Centre between 5 and 7 April 2022, following which written closing submissions were submitted on 22 April and, at my request, further evidence on 2 August. Mr Bennett was represented by Mr Barry Denyer-Green, who called him to give evidence of fact, Mr Seth Roberts BEng MIOA as a noise expert, and Mr Nicholas Barlow FRICS FAAV to give expert valuation evidence. The respondent was represented by Ms Caroline Daly, who called Mr Simon Richards, its Chief Financial and Engineering Officer, Mr Ben Holcombe BEng MIOA as a noise expert, and Mr Neil Inman MRICS to give expert valuation evidence. I am grateful to all of them, particularly to counsel for their very helpful closing submissions.

Statutory Provisions

3. The relevant sections of the Act were outlined by the Tribunal (Martin Rodger QC, Deputy Chamber President and Mr A J Trott FRICS) in another relatively recent runway extension case, *Aldridge v London Southend Airport Company Limited* [2021] 008 (LC), as follows:
 - “11. Part 1 of the Land Compensation Act 1973 confers a right to compensation where the value of an interest in land is depreciated by physical factors caused by the use of public works: section 1(1). To be eligible for compensation a claimant must have a qualifying interest in land and must make a claim within a prescribed period...
 12. The physical factors which may give rise to a claim are identified in section 1(2) of the Act and include noise, vibration, and artificial lighting. The relevant public works are listed in section 1(3) and section 9 and include any aerodrome.
 13. Section 3(2) of the Act prohibits the making of a claim before the “first claim day”, which is the day next following the expiry of 12 months from the “relevant date”. Where the claim is in respect of physical factors caused by aircraft following runway or apron alterations to an aerodrome, the relevant date is the date on which those alterations were first used after their completion: section 9(2)-(3).
 14. Section 4 provides for the assessment of compensation.
 15. By section 4(1) the compensation payable on any claim is to be assessed “by reference to prices current on the first claim day”. Section 4(2) then provides:
 - “In assessing depreciation due to the physical factors caused by the use of any public works, account shall be taken of the use of those works as it exists

on the first claim day and of any intensification that may then be reasonably expected of the use of those works in the state in which they are on that date.”

This provision does not alter the direction that compensation for depreciation in the value of an interest in land is to be assessed by reference to prices current on the first claim day. Its purpose, as it appears to us, is to rule out any argument that some part of a depreciation in value is ineligible for compensation because it is not due to physical factors caused by the use of the works at the first claim day, but instead reflects an expectation that greater interference will be experienced from physical factors in future as a result of a subsequent intensification of use....

16. A claim for compensation is initiated by a notice of claim given under section 3(1). By section 4(4) the value of the interest in land in respect of which the claim is made is to be assessed by reference to the nature of the interest and the condition of the land as it subsisted on the date of service of the notice of claim. By section 16 disputes are to be referred to the Upper Tribunal.”

Facts

4. Prior to the Covid pandemic, Birmingham Airport (“the airport”) was the UK’s third largest airport outside London, and the seventh largest overall. In 2019 it handled 12.7 million passengers, serving 430 destinations. It has one terminal, and a single runway lying roughly north-west to south-east in direction. The public works (“the works”) that give rise to this claim are the 405-metre extension to the runway, and the construction of a parallel taxiway.
5. Prior to the works, the length of runway restricted the range of destinations, markets and routes which could be served directly from the Airport. The purpose of the works was to enable aircraft to operate with a full payload to long haul routes, such as the west coast of America, and also allow fully laden aircraft to fly to mid-haul destinations (which were already operated from the airport), such as the Middle East. The works were deemed critical to the regional aspirations to make Birmingham a “World City”.
6. The extended runway was first used on 5 February 2014, so this is the relevant date under s.9 of the Act, and it therefore sets the first claim day, and valuation date in this reference, at 6 February 2015.
7. Oak Tree Lodge lies about a mile to the south-east of the runway, close to the village of Bickenhill. Located in a rural setting, it is a detached three-bedroomed bungalow with outbuildings in large, 0.72-acre, gated grounds. The agreed floor area of the building is 1,398 sq ft.
8. Aircraft can take off from or land on the runway in either direction, depending on prevailing winds. When arriving from the south-east, or taking off to the north-west, the runway is known as R33. In the opposite direction, it is R15.
9. Between 2010 and 2018, typically 2/3 of aircraft used R33, arriving over Oak Tree Lodge, and taking off away from it. The noise experts agree that the change in noise levels at Oak Tree Lodge as a result of the works from aircraft arriving on R15 from the north-west (1/3

of arrivals) or taking off on R33 to the north-west (2/3 of departures), is insignificant. So, the effect of noise, if any, is broadly in respect of the 2/3 of arrivals and 1/3 of departures over the property.

10. The extension of the runway brought it 440m closer to Oak Tree Lodge. Comparing the highest average height at a point broadly above the property (precisely where is not agreed), before the works with the lowest average height after the works, arriving aircraft on R33 are 70 feet closer to the ground, and departing aircraft on R15 are 202 feet closer.

Evidence of fact

Mr Andrew Bennett

11. Mr Bennett provided a witness statement and gave evidence. He bought Oak Tree Lodge from the respondent in April 2000, when his previous property, The Cabin, Coventry Road, Bickenhill, was required by the airport for the construction of a new inbound access road. Mr Bennett acquired Oak Tree Lodge by exchanging The Cabin and paying a further £40,000.
12. Despite the proximity of Oak Tree Lodge to the airport, Mr Bennett said that he and his family lived there happily for fourteen years, without cause to complain to the Airport. He accepted in cross-examination that there was significant aircraft noise before the works but said that it wasn't an abiding feature.
13. However, Mr Bennett said that from February 2014 life became more difficult; more and noisier aircraft started to fly closer and lower overhead at all hours. From what he had seen, larger, noisier aircraft are now using the runway, and creating intolerable disturbance. The noise of planes taking off is considerably louder than those landing.
14. Almost immediately upon the runway being extended, he said, sleep was disturbed, aircraft noise seemed louder, was more intrusive, and was discombobulating. When working from home, conference calls and presentations now require him to 'mute' when an aircraft flies over, and normal conversation in the house is paused. Even in the peak of summer, he and his family keep windows and doors shut because the noise of aircraft passing overhead is so intrusive verging on painful.
15. In his plainly heartfelt oral evidence, Mr Bennett said that before the works, the airport was not front and centre of his families' thoughts at Oak Tree Lodge. Post works, the noise came 'crashing and slamming into their lives'. Every aspect of home life, he said, had deteriorated because aircraft were lower, closer, and noisier.
16. Although the noise experts had agreed that the change in ground noise within the airport owing to the works was insignificant, Mr Bennett said that he now noticed ground noise at night, when he had already been woken by aircraft taking off or landing.

Mr Simon Richards

17. Mr Richards is Chief Financial and Engineering Officer for Birmingham Airport Limited. He explained that the purpose of the works was to enable existing aircraft types to fly directly to long haul destinations with a full payload. Before the works, destinations were

restricted to short and medium-haul routes and limited long-haul routes to the east coast of North America. The intention of the works was to enable long haul flights to the west coast of America, the Pacific Rim and the Far East. In addition, aircraft would be able to fly to mid-haul destinations, such as the Middle East, fully laden, because there was more cargo in the aircraft's hold.

18. In reality, this hasn't really transpired. Mr Richards explained that while it was important to the airport to be able to have the capacity to service these routes, it was for the airlines to decide whether the routes are viable, and that hasn't proved to be the case.
19. The driving force behind the works, therefore, was to produce a longer runway for taking off. Almost as a side effect, the point on the runway where the aircraft touch down has also moved. Mr Richards explained that aircraft 'come in' at an angle of three degrees. That hasn't changed, but because the point at which they touch down is closer to Oak Tree Lodge (when using R33), so they are lower to the ground above the property following the works.
20. As regards night-time aircraft movements, Mr Richards said that these had remained broadly similar in the years immediately prior to and following the relevant date. He accepted, however, that the number of passengers had increased by about 50%, accommodated by larger aircraft, with less legroom available.
21. While the change in average aircraft height was, in the end, common ground, Mr Richards accepted that some might be higher, some lower. Mr Denyer-Green put it to Mr Richards that the sort of aircraft that would be lower would be the heavier aircraft, with more passengers and cargo. Mr Richards did not dispute that, but thought the position was more nuanced; newer aircraft have better engines and more efficient wing shapes, enabling them to take off sooner.

Expert evidence

22. At the start of the hearing, I asked the parties to focus on *how* the noise evidence informed the valuation evidence, which in turn would inform the level of compensation.
23. Mr Barlow was instructed on 18 January 2021. On 20 January 2021, he submitted to the respondent a claim of £120,000, based on a reduction in the value of Oak Tree Lodge from £600,000 to £480,000. These figures were repeated in the Notice of Reference and Statement of Case which he submitted to the Tribunal on 1 February 2021. Mr Barlow said that his view on diminution in value, arrived at within 48 hours of being instructed, was based on his own experience as a local practitioner, on what Mr Bennett had told him, and on his experience in making Part 1 claims in respect of road schemes in the area. The claimant's noise expert, Mr Roberts, was not instructed until Summer 2021. His first report was dated 12 November 2021. Its contents did not cause Mr Barlow to change his view. He said that he considered Mr Roberts' evidence, but that it simply aided in explaining the personal experience of himself, Mr Bennett, and other claimants, and put 'flesh on the bone'.
24. While Mr Barlow made several references to Mr Roberts' evidence, as he said in his report "ultimately the assessment of the claim comes down to the experience of the valuer, [partly] in light of other claims he or she has been involved with and also general

valuations that underpin this. The valuer will then apply this knowledge to the parts of the case”.

25. Mr Barlow based his assessment of compensation on the evidence of Mr Bennett, the knowledge in the market of the airport’s desire to expand, and the evidence of Mr Roberts in respect of increases in maximum noise levels and reduced aircraft heights.
26. Mr Inman’s first report dealt with Mr Holcombe’s noise evidence in one paragraph. That is perhaps unsurprising when Mr Holcombe’s view was that there had been no significant increase in noise levels as a result of the use of the works, and Mr Inman considered that was borne out by the sales evidence. But when Mr Denyer-Green put to Mr Inman tables of noise data showing increases in noise events in the nearby village of Barston and asked how this data might have changed Mr Inman’s view had he been aware of it, Mr Inman said that as a Chartered Surveyor, while he acknowledged there were figures in the report, they ‘don’t actually mean a lot to me directly’.
27. The extent to which in reality the noise evidence influenced the valuation evidence is questionable. The valuers came to their conclusions from direct experience, and from data and evidence of sales of property in the area. While neither valuer totally ignored the noise evidence it seems to have served to reinforce the opinions that they had already reached, based on their usual sources of evidence.
28. This is not new. In *Mann & Ors v Transport for London* [2016] UKUT 1026 (LC), I observed:

“66. Having read copious written evidence and heard extensive oral evidence and submissions on the subject of noise, I do not find myself significantly further forward in my deliberations as to the depreciation in value of the claim properties on the statutory assumptions.”
29. In *King v Dorset County Council* [1997] 1 EGLR 245, the Tribunal (Judge Marder QC, President) said this:

“As in other claims made under Part 1, I heard a great deal of evidence from acoustics experts upon the subject of noise measurement. For these claimants, as indeed is likely for most claimants in respect of a new road or new road pattern, the additional noise generated by extra traffic is the most important of the physical factors underlying the claim. It should not be thought that the Tribunal will disregard expert technical evidence from acoustics specialists as unimportant or irrelevant. Nevertheless, it should be borne in mind that the task of the Tribunal is to determine the depreciation (if any) of the value of the claimant’s interest. That is a matter for the market, and as [counsel for the claimant] observed, the bidder in a residential market does not have an acoustics expert, nor even a noise meter, at his elbow when making his bid.”
30. The President went on:

“[The first claimant] described the noise as “very disturbing and inescapable”. [The second] referred to is as “a racket against which we have no protection”. In my judgment it is subjective impressions of this kind which would more strongly

influence the potential purchaser than would the scientific calculations of acoustics experts.”

31. I agree.
32. In *Aldridge*, the Tribunal (at 48) commented that the claimants’ own evidence, while necessarily subjective and self-interested, provided a much more immediate and vivid impression of the change in the noise environment following the runway extension than could be derived from the technical data alone.
33. Similarly, in *Mann* (at 69), the evidence of the claimants themselves was persuasive and largely consistent; they were able to describe first-hand the increase in noise levels. And in *Robertson and Spark v Manchester Airport plc* [2010] UKUT 370 (LC), the Tribunal (Mr A J Trott FRICS), acknowledged the importance of the evidence of the noise experts, but again had regard to the subjective views of the claimants.
34. That is not to say that the evidence of the noise experts is to be wholly discounted or, as the President said in *King*, thought to be unimportant or irrelevant.
35. It can perhaps be thought of in this way. There must first be a demonstrable change in a physical factor, in this case noise, and it must have been caused by the use of the works. In that sense the noise experts’ evidence is necessary because to succeed, the claimant must be able to show that the use of the relevant works has caused a change in a prescribed physical factor. Secondly, there must be a demonstrable diminution in value of the claim property because of the change in the physical factor. Proof of a reduction in value per se following the works will not be enough for the claim to succeed; those changes in values might be down to something else, including some consequence of the works which is not on the list of prescribed physical factors.
36. Accordingly, the noise evidence is relevant to the extent of demonstrating the first point – a change in the prescribed physical factor of noise. But the valuation evidence is crucial in answering the question of diminution.

Evidence of the noise experts

37. The main dispute between the noise experts was the appropriate method of measuring noise; Mr Holcombe preferred the use of $L_{Aeq, 16\text{-hour}}$ to measure noise levels before and after the works and Mr Roberts preferred the use of L_{Amax} .
38. The noise experts’ statement of agreed facts recorded the following:

“6. Aircraft noise is principally quantified and predicted using average equivalent noise levels which average both directions of runway use (both RW15 and RW33 for Birmingham Airport) to produce average annual daytime and night-time noise contours. These average noise contours are quantified for a summer period of 92 days between mid-June and mid-September. For daytime noise, this average measure is described as the $L_{Aeq, 16hr}$ noise index for aircraft operations occurring between 0700hrs and 2300hrs. For night-time noise, which is defined as 2300hrs to 0700hrs, a summer night-time $L_{Aeq, 8hr}$ index is used.

7. The $L_{Aeq, 16hr}$ and $L_{Aeq, 8hr}$ indexes are measures of noise exposure determined from a combination of the number of aircraft noise events, their respective noise level and duration. These indexes are logarithmic which means that as noise increases, an even higher level of noise is required to result in an equivalent change.

8. Where an increase of 3dB $L_{Aeq, 16hr}$ occurs, this is typically taken to be a significant level difference.

9. Airborne aircraft noise levels at the Property, as a result of the runway extension, are not expected to increase by more than 3dB $L_{Aeq, 16hr}$.”

39. Essentially, the issue between the noise experts is that Mr Holcombe, for the airport, relies on L_{Aeq} as the accepted and most commonly used metric for quantifying noise affecting communities around airports. It is, he says, the best correlation with mean annoyance, and on the evidence, Mr Holcombe says that there has been no discernible or significant increase in noise levels, measured on an L_{Aeq} basis. The airport says that therefore noise is not a physical factor that could have depreciated the value of Oak Tree Lodge.
40. It might be thought that taken together, paragraphs 8 and 9 of the noise experts’ joint statement, signified agreement between them that since noise levels at Oak Tree Lodge are not expected to increase by more than 3dB $L_{Aeq, 16hr}$, any change was insignificant. However, Mr Roberts, surprisingly, said in evidence that wasn’t what he had agreed, and that wasn’t a safe inference to draw.
41. Mr Roberts’ main criticism of $L_{Aeq 16 hr}$ was that it did not differentiate between a small number of loud events and a large number of quiet events. It was not, he said, an appropriate metric to use when assessing change. While I accept Ms Daly’s submission that government guidance recognises the limitations of the L_{Aeq} metric, yet still considers it to be the preferable means of assessing mean annoyance levels, there was no dispute between the parties that the $L_{Aeq 16 hr}$ metric is not a measure that the ordinary person could understand, and one which may not reflect their perception of aircraft noise. That seems to me to be the issue here.
42. Counsel referred to previous decisions of the Tribunal and the courts. Ms Daly submitted that all previous Part 1 decisions of the Tribunal have featured noise evidence measured on a L_{Aeq} basis. None have featured L_{Amax} . Mr Denyer-Green referred to decisions of the High Court where L_{Amax} was accepted in principle. The fact that L_{Amax} has not featured in previous decisions of the Tribunal does not preclude its use in this reference. To my mind it is not a decision as to whether it must be either L_{Aeq} or L_{Amax} . Neither is necessarily right or wrong, they simply measure different things – or it might be more accurate to say that they measure the same thing, but differently.
43. Mr Holcombe did not dispute Mr Roberts’ contention that larger heavier aircraft flying over Oak Tree Lodge generate higher maximum noise levels as they pass overhead. Mr Roberts identified several ‘heavy wake turbulence category’ (HWTC) aircraft, which he said had increased in number between the years 2000-2013, and the years 2014-2019. Mr Holcombe accepted that the number of HWTC had increased substantially following the works. On full payloads, HWTC required the extended runway, although Mr Richards’

evidence was that the long-haul business had not materialised. Mr Holcombe also accepted that if an aircraft is heavier, it would generate more noise on take-off.

44. With one exception, five of the six HWTC aircraft would be lower to the ground than before the works. Mr Holcombe said that the centreline had altered slightly, meaning that aircraft were generally, on a lateral plane, slightly further away from Oak Tree Lodge than before. Both Mr Barlow and Mr Bennett gave direct evidence that aircraft still flew straight over the property. Even if Oak Tree Lodge is no longer on the centreline, if aircraft are sufficiently lower they might still be closer to the property. But as Ms Daly pointed out, lower-flying planes is not a physical factor under the Act; what matters is noise.
45. Mr Holcombe accepted that if one could sit at Oak Tree Lodge before the works and listen to and remember a level of aircraft noise, and then do the same after the works, one might be able to perceive the noise being louder. He also accepted that aircraft flying over Oak Tree Lodge had got noisier. But he returned to the L_{Aeq} evidence which showed no difference, and therefore no increase in mean annoyance.
46. It is notable that Mr Holcombe had not visited Oak Tree Lodge, whereas Mr Roberts had.
47. It is not necessary for me to further summarise the copious written evidence, vast appendices, and over five hours of oral evidence on the subject of noise. It simply comes to this. I accept that when measured on a L_{Aeq} basis, little if anything has changed, but that isn't what Mr Bennett, and potentially what a prospective purchaser (to which I return below), experience. As Mr Denyer-Green submitted in closing, much of Mr Roberts' evidence on HWTC aircraft went unchallenged, and while Ms Daly mounted many valid criticisms of other aspects of Mr Roberts' evidence, I am satisfied on the evidence that Oak Tree Lodge suffered a significant increase in noise levels as a result of the use of the works, when measured on a L_{Amax} basis – which is more akin to what Mr Bennett and his family experience. There has, therefore, been a change in the physical factor of noise because of the use of the works. The next question is how that change will have affected the market value of Oak Tree Lodge.

Valuation Evidence

48. The convention in Part 1 claims is to compare the value of the affected property with the works in use, and the physical factors “switched on”, with its value with the works physically present but not yet in use, as if the physical factors had been “switched off”, the difference being equivalent to the compensation payable. This terminology doesn't always sit comfortably where physical factors already exist and are made worse. In *Russell v Transport for London* [2020] UKUT 0281 (LC) the Tribunal (Mrs Diane Martin MRICS FAAV) observed that ‘turned down’ might be more appropriate than “switched off”, given that the claim property in that case was already affected by significant levels of noise, fumes, and street lighting. The same might be said in this reference, but for convenience and because the parties did so, I shall refer to the values before the runway extension was in operation as “switched off” and those at the first claim day to be “switched on”.
49. It is helpful first to outline the marketing history of Oak Tree Lodge, which was provided in Mr Barlow's second report.

50. It is common ground between the valuation experts that the value of Oak Tree Lodge when Mr Bennett acquired it in April 2000 was £200,000. Mr Bennett then undertook a programme of renovation.
51. In October 2001 he approached local estate agents Hunters for marketing advice. In suggesting an asking price of £325,000 the agents commented that ‘Some purchasers will obvious[ly] be deterred by the proxim[ity] of the Airport and flightpath but I am confident that with the large plot and very well-presented accommodation there should be genuine interest.’ The property was not placed on the market.
52. In June 2005, Mr Bennett again dipped his toe in the water, with advice from both Hunters and local agents John Shepherd Residential. Hunters recommended an asking price of £450,000, saying that house prices had risen rapidly since 2001 before plateauing in August 2004, and recovering in early 2005. It went on: ‘The proposals to extend and develop Birmingham International Airport did cause some uncertainty in the Catherine de Barnes, Eastcote, Barston and Hampton in Arden areas albeit, now a decision has been made, uncertainty has been removed and properties continue to sell. However, due to [the] general state of the market and the airport proposals, the market is sensitive to price...’.
53. John Shepherd Residential valued Oak Tree Lodge at £500,000 and were instructed to market the property at £525,000. In August 2005 an offer of £515,000 was accepted, but the potential purchasers pulled out in September owing to a relationship breakdown.
54. Mr Bennett returned to the market in early 2011. John Shepherd recommended an asking price of £575,000, but an optimistic marketing report from Savills suggesting a guide of £650,000 won the instruction, and Mr Bennett instructed the firm to put Oak Tree Lodge on the market in July 2011. Mr Shepherd might have been closer to the mark, because no offers were forthcoming, and sadly the Savills Solihull office closed in December 2011.
55. In June 2012, Mr Bennett turned to Reeds Rains, who recommended an asking price of £625,000, but it appears that Mr Bennett did not put the property on the market.
56. Much more recently, in February 2021, Solihull agents Esther Broomhall and Partners (‘EBP’) provided marketing advice. Ms Broomhall noted Mr Bennett’s option of extending Oak Tree Lodge, and also significant modernisation works. She suggested a current market value of between £625-£650,000, but should Mr Bennett extend and modernise the property, it would have a value in the region of £900,000. However, she cautioned: ‘given the locality and potential challenges of a sale at this level factoring in the motorway noise, flight path and nearby adjacent park home site, my opinion would be to conduct these works only if you have the intention to stay for a good number of years, rather than perhaps sell in the short term with hope to achieve back the money invested’.

Mr Barlow

57. Mr Barlow had acted for several adjoining landowners in negotiating easements with the airport for the removal or reduction in height of trees for the runway extension. On agricultural land, the agreed diminution in value for tree removal varied between 4 and 12.5%, in domestic gardens the agreed diminution in the value of houses was between 4 and 8.5%. However, he accepted that the removal of trees, or the effect on view, was not compensatable under the Act.

58. In Mr Barlow's view, a prospective purchaser of Oak Tree Lodge would view other properties in the area, speaking to various residents, and would also be aware of press coverage suggesting that the airport was becoming increasingly busy, with the possibility of a second runway. The airport was itself predicting large increases in passenger numbers and had expansionist aspirations. Any purchaser would therefore exercise caution, and would in Mr Barlow's opinion expect a substantial discount for the increasing number of flights then or reasonably expected.
59. In his first report, Mr Barlow assessed the switched off value of Oak Tree Lodge at £600,000. He based this on Savills' 2011 assessment of value at £650,000 and in the light of other properties with which he was familiar. He referred to two sales of bungalows as comparable evidence. The first was Casa Mia, in Bickenhill. This sold for £530,000 in June 2018. Mr Barlow was familiar with the property and while he concurred with the sales particulars' description of the property as 'a project', he thought the accommodation similar in layout to Oak Tree Lodge. The second was Heath End House, located opposite Oak Tree Lodge of which Mr Barlow had negotiated the sale to Highways England in "2017/18". It was larger than Oak Tree Lodge, and in a larger plot, but was also in need of refurbishment.
60. In his first report, Mr Barlow said that having adjusted the sales prices for increases in value since the first claim day, and disregarding the runway extension, the value of Oak Tree Lodge was £600,000. The Savills valuation in 2011 at £650,000 in a 'no runway extension world' would, when adjusted using the Land Registry house price index, point to a value in February 2015 of £715,000, but Mr Barlow did not consider this figure to be substantiated.
61. There was little by way of explanation of how these figures were calculated but in cross-examination Mr Barlow explained his thinking for the first time. Casa Mia sold for £530,000 in June 2018. He thought that there had been general house price growth of 15% between the valuation date and June 2018 (using the Land Registry's Solihull detached house price index), which would put Casa Mia at £450,000 at the valuation date. He made two further adjustments. The first was for condition – he allowed £125,000 as the cost to make Casa Mia's condition comparable to Oak Tree Lodge. Secondly, he applied his 20% adjustment, to arrive at £690,000 for Casa Mia as a switched off value. It was bigger than Oak Tree Lodge, thus he reduced to £600,000.
62. He said that he had carried out a similar exercise on Heath End House. The sale price in 2018 was £770,000. He allowed 15% to adjust for time, equating to £693,000. He then added an amount (unstated but which I assume was £180,000) for condition, deducted £30,000 to allow for Heath End House's paddock, to arrive at £843,000, before adding 20% to arrive at a switched off value for Heath End House at the valuation date of just over £1million.
63. Further flesh was put on the bone in Mr Barlow's second report and in the valuers' statement of agreed facts. Mr Barlow explained that having purchased Oak Tree Lodge, Mr Bennett had carried out various improvements (external walls, new driveway, landscaping and decoration) which were completed before Hunters suggested an asking price £325,000 in October 2001. The Solihull index between November 2001 and the valuation date of February 2015 was agreed to be 89.96%. Mr Barlow applied that to the £325,000 to arrive at £617,045. He accepted that the £325,000 was an asking price and that

applying an index over 14 years was unlikely to produce an accurate figure. Mr Inman was sceptical that applying indexation over such a long period was likely to result in an accurate figure, but if it should be applied to anything, it should be to Mr Bennett's purchase price of £200,000.

64. Mr Barlow agreed that the hypothetical bidder in the valuation exercise would not have an acoustics expert, nor a noise meter, at his elbow when making his bid. Nor, in Mr Barlow's view would he or she have detailed evidence of sales, as much of the evidence would not be published and available until after the first claim day. It will be the subjective analysis by potential purchasers at the valuation date as to whether they are prepared to purchase the property in the first place and, if so, what deduction they would expect for the disruption from noise.
65. In his view, purchasers will be aware of the airport, that its runway had been extended, that planes are lower and potentially noisier, that vegetation had been removed. They would have looked into and been aware of the airport's desire to expand, of its regular acquisition of land for future expansion, and of projected passenger number increases.
66. If he were asked to advise such a purchaser, he would have regard to other assessments in the area. Mr Barlow's practical experience of airport-related part 1 claims was limited to the runway extension at Birmingham. But he also had experience of road-scheme claims, where compensation had varied between 4%-6% for the M40, 5-15% for the Birmingham northern relief road, and 5-40% for full injurious affection claims. He accepted that in some cases the compensation was based on factors other than noise, and the injurious affection claims involved land taken.
67. Mr Barlow said that the increase in maximum noise levels, inside and out, are so pronounced, representing a quadrupling of sound pressure and that, the noise levels – to Mr Barlow – are significantly worse than in any of the Part 1 claims in which he has been involved. The physical effects are far more than annoyance. Having regard to specific levels of compensation on the Birmingham Northern Relief Road (7.5%) and the M40 (4-6%), which were based on the drone of road noise, in his opinion the reduction required was 20%, or £120,000 and the switched-on value was £480,000.
68. In cross-examination, Mr Barlow said that his basic approach was that compensation should be based upon a core of equivalence; and that Mr Bennett's own experience should be reflected as well as the element of compensation which would stem from the difference that a prospective purchaser would be prepared to bid. He accepted that if there was no significant increase in noise, then no compensation would be payable.
69. As for the Savills' suggested guide price of £650,000 in July 2011, Mr Barlow accepted that property values had generally increased between then and the valuation date. When asked by Ms Daly how that was consistent with Mr Barlow's switched off valuation of £600,000, he said that looking back the Savills' valuation (or, guide price) 'seemed to be a bit high'. He relied upon it to the extent that it provided a 'tone of the list' of the sort of levels of value which local agents placed on the property.

Mr Inman

70. Mr Inman's evidence comprised sweeps of residential transactions between 2013 and 2016 at varying distances from the airport, and then a small number of specific comparables.
71. His two sweeps had radii of 11.5 miles and 5 miles from the south-eastern end of the runway, encompassing 1055 and 732 properties respectively. They were grouped into villages, being either 'control' locations – said to be unaffected by noise, or 'affected' villages, and comprised all residential property types. In each case, a highest and lowest value was calculated, both in absolute and per sq ft terms, and what Mr Inman called the median value, although he confirmed in evidence that he meant the mean, or average. His conclusion from this evidence was that there was no perceptible trend showing a fall in house prices as a result of the works being brought into use.
72. In cross-examination he accepted the limitations of the data –it was based on sales particulars with varying level of precision of floor area etc, and with broad assumptions about condition, and whether for instance a flat was above a fish and chip shop, etc. He accepted that for some locations in affected areas, the transactions listed could be located adjacent to rather than under the line of the runway and might not be as affected. Mr Inman also accepted that there would be more significance of changes in noise in a rural area in which Oak Tree Lodge was situated, than there would be in urban areas, with higher ambient noise levels, traffic etc, such as parts of Marston Green and Sheldon, both of which were 'affected' areas. Additionally, not all affected areas suffered to the same degree; Catherine-de-Barnes for instance was less affected than other areas, being away from the runway line.
73. Mr Inman confirmed in answers to questions from me that really, I could only take his tables as evidence of trends, and that no weight could be placed on the values per sq ft which featured in the table.
74. In his first report Mr Inman also referred to four specific sales of bungalows.
75. The first was Casa Mia, as above. Mr Inman agreed that Casa Mia sold for £530,000 in June 2018, which he said equated to £282.97 per sq ft on a floor area of 1,873 sq ft. While it was the only recorded bungalow sale in Bickenhill, Mr Inman placed little weight on the sale owing to the sale being more than three years after the valuation date, and because the property required refurbishment.
76. His other three comparables were in Hampton-in-Arden, which Mr Inman considered a superior location to Oak Tree Lodge owing to amenities and services available in the village and being further away from the flight path.
77. 25 Eastcote Street (*sic* – it's Eastcote Lane) (1,033 sq ft) sold in June 2015, a few months after the valuation date, for £382,500, equating to £370.28 per sq ft, which Mr Inman considered should form the upper parameter of a valuation of Oak Tree Lodge.
78. 23A Eastcote [Lane] (1,227 sq ft) sold in January 2015 for £380,000, equating to £309.70 per sq ft. In oral evidence Mr Inman acknowledged that 23A was a house rather than a bungalow, but he maintained that the sale was a useful comparable. He said bungalows were in demand and relatively scarce, causing them to achieve higher rates per sq ft than those for houses. The rate achieved for 23A was consistent with that view.

79. Finally, 52 Fentham Road sold in July 2016 for £375,000 equating to £335.12 per sq ft. The sales particulars described the property as slightly basic and in need of some modernisation. This formed his lower parameter.
80. Mr Inman's parameters were therefore £335 to £370 per sq ft. Having considered the various attributes of Oak Tree Lodge – its gated entrance, turning circle, presentable but slightly dated accommodation, he valued the property at £350 per sq ft, or £489,300 say £490,000 as a switched off value.
81. He accepted that regard could also be had to the sale of The Dale, Catherine-de-Barnes Lane, not far from Oak Tree Lodge, referred to in Mr Barlow's second statement, and which sold for £570,000 in 2016. The floor area of 2,200 sq ft, suggested a sale price of £260 per sq ft in a switched-on world. But he noted the floor area was considerably larger than Oak Tree Lodge, and without being able to inspect the property he felt, understandably, unable to comment further. He accepted that The Dale was potentially located closer to Oak Tree Lodge than the other comparables, and that if weight were placed on the transaction, it is possible that Mr Inman's £350 might reduce.
82. Mr Inman said that any prospective purchaser would visit the property on two or three occasions to assess whether there was noise, but would be unlikely to do so at night. A lay purchaser would not, in his view look up or indeed understand L_{Aeq} figures. But in his view, while he accepted that there was greater noise after the works than before the works, a prospective purchaser would not notice any difference, and would not trim their bid, so £490,000 was also his switched-on value.
83. In cross-examination, Mr Inman agreed that if I were persuaded that there had been an increase in noise affecting Oak Tree Lodge, then there would inevitably be a diminution in value to some degree. He was reluctant to put a figure on it but thought any diminution would be less than the 20% contended for by Mr Barlow. He accepted that because his comparables were drawn from sales after the relevant date, any such adjustment would be to increase his switched off value.
84. I asked Mr Inman how the Esther Broomhall value of £625,000 in a switched-on world related to his opinion. He estimated growth in values between the valuation date of February 2015 and Ms Broomhall's advice in February 2021 was in the order of 20%, which he considered in line with his opinion.

Discussion

The basis of valuation

85. In *Aldridge*, the Tribunal dealt with the direct evidence of Part 1 claimants in this way:

“59. Mr Walton QC [for the Airport] submitted, and we accept, that the Tribunal is charged with determining how (if at all) the change in noise levels affected the market, not how it affected individual claimants. A prospective purchaser at the first claim day may not have known about the historical change in the pattern and level of noise caused by the opening of the runway extension. The purchaser would not care about what the noise environment

used to be like but might be concerned about the possibility of intensified use of the Airport in the future.

60. That is not to say the claimants' direct evidence is irrelevant to the exercise which we must undertake, but it is not a determining factor in the valuation exercise to which we now turn."

86. Mr Barlow told me that his assessment of 20% calculation of compensation comprised two elements: the diminution in the value of Oak Tree Lodge, in the sense that a hypothetical purchaser would pay less for the property if it were on the market after the first claim day that they would before the works were used, and secondly an element to reflect 'equivalence', i.e. compensation personal to Mr Bennett.
87. In his closing submissions the best Mr Denyer-Green could make of Mr Barlow's ambitious equivalence point was that the Tribunal's statement at paragraph 60 of *Aldridge* could be read as an acknowledgement that Part 1 compensation must provide full compensation to a particular claimant for the effect of the proven physical factor(s). The said effect on value would not be compensated if hypothetical buyers in the market considered that there was a lesser physical effect than the actual physical effect proved by a particular claimant.
88. But that ignores the Tribunal's acceptance of the submission of counsel for the airport as outlined in paragraph 59 of *Aldridge*. And, as Ms Daly submitted in closing, it is wrong in law. There is no statutory basis for assuming the principle of equivalence, in a compulsory purchase *Shun Fung*¹ sense, from the 1973 Act. Section 1(1) of the Act gives a claimant a right to compensation "where the value of an interest in land" is depreciated by physical factors caused by the use of public works. There is no equivalent provision to the right to compensation "not directly based on the value of land" under rule 6 s5(6) of the Land Compensation Act 1961.
89. It follows, therefore, that since Mr Barlow's assessment of compensation at 20% of his switched-off value is in part based on an impermissible interpretation of the Act, his assessment of compensation must be too high.
90. Mr Inman accepted that if I were satisfied that there had been a significant increase in levels of noise, it would follow that there would be an element of compensatable diminution in the value of Oak Tree Lodge. As I indicated above, I am satisfied in that respect, and so my parameters of compensation are now set. It must be higher than Mr Inman's zero, and it must be lower than Mr Barlow's 20%.
91. In cross-examination Mr Inman accepted that the necessary adjustment would be to increase his switched-off figure, since his comparable evidence was from a switched-on world. Accordingly, I can take as my starting point the switched-on value, and since the valuers are only £10,000 apart a reasonable compromise would be the equidistant £485,000.
92. The outstanding piece of the jigsaw is therefore the switched-off value.

Agents' advice and the use of Indices

¹ *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111, PC at 125

93. The evidence of marketing advice from a variety of agents is of some use and can be compared to an extent with the Land Registry Solihull detached house price index which Mr Barlow referred to. I agree with Mr Inman that the application of an index over long periods is of limited utility and the Tribunal has been reluctant to do so in the past, but perhaps some broad comparisons can be made, accepting that the index is not specific to bungalows, that it covers the wide area of Solihull, and that its brush is therefore very broad. While both experts referred to the index in their reports and joint statement, neither included a copy of the table. At my request, this was submitted after the hearing.
94. Turning to the marketing history of the property, this again is of some help, treated with caution, because it deals with the claim property. It can reasonably be assumed from the suggested asking prices, that in each case the estate agent would expect to achieve something below those figures. There is no evidence that the market was so hot that best bids in excess of the asking price were expected.
95. But we only have one actual offer - the John Shepherd August 2005 marketing campaign at £525,000 which produced an offer of £515,000. That bid was acceptable to Mr Bennett, and I accept his unchallenged contention that the purchasers pulled out for reasons unconnected with the property. So, with some caution, I am satisfied that some regard can be had to the offer made as an indication of the value of Oak Tree Lodge at that time.
96. The Savills suggested June 2011 marketing figure of £650,000 looks in retrospect to be optimistic, producing no offers in five months. The John Shepherd figure of £575,000 some months before looked, with the benefit of hindsight, to be a more realistic asking price, probably pointing to a value in the region of say £550,000.
97. Applying the index to the offer of £515,000 in August 2005 (when the index was at 83.2) would produce a March 2011 (86.9) value of just under £540,000 or thereabouts, so broadly comparable with the value that might have been achieved had John Shepherd put the property on the market. It seems, therefore that between 2005 and 2011 the value of Oak Tree Lodge was growing more or less in line with the value of detached houses across Solihull.
98. If the index is applied to the period between the offer of £515,000 in August 2005 (83.2) and the valuation date of February 2015 (100), a figure of just below £620,000 is produced. That can be assumed to be based largely on switched-off data, because the index covers the whole of Solihull, not just properties near the airport, and comprised something just short of 30,000 sales in the period. But it might also include some properties – switched on – during the latter part, allowing for lagging of the market, of final twelve months. There is a quirk in Part 1 claims in that the first claim day and therefore valuation date is 12 months after the works first came into use, but of course comparable transactions in that intervening year might have been affected by the works, because the market does not align with the hypothesis required to be assumed under the Act. I am sceptical that much can be drawn, in terms of absolute figures, from applying an index over a period of ten years, but if used simply as a rough and ready guide, it produces a result which is closer to, in fact higher than, Mr Barlow's switched-off figure than that of Mr Inman.
99. In the EPB advice in February 2021, Ms Broomhall put the current market value at £625,000 - £650,000. I remind myself that her advice noted the flight path among other

factors. It is a switched-on figure. Taking Ms Broomhall's lowest figure of £625,000, and applying the index retrospectively to the valuation date, albeit over six years, would produce £480,000 (Feb 21 130.2) which fits more or less with my compromise switched on figure of £485,000. It therefore appears that, once switched on, the value of Oak Tree Lodge seems again to have broadly moved with the market.

100. The last analysis is whether there was a growth-foregone factor. This is even less reliable, because it requires use of the index over a longer period. But for what it is worth, taking the August 2005 offer of £515,000 (index 83.2) and applying the index through to the date of the EPB valuation in February 2021 (130.2), a value of around £805,000 is arrived at as a switched off equivalent figure, compared with the EPB figure of £625,000. The gap would not of course equate to the compensatable amount, because it is six years after the valuation date, and would also result from a variety of factors.
101. The use of the indices can only give indications, rather than reliable absolute figures, but they would seem to suggest that the value of Oak Tree Lodge generally moved with the market, before and after the works, but there was an intermediate price correction in the period either side of the valuation date. That would suggest that there is a compensatable loss.
102. It did occur to me that there might have been a rebasing of the index, which sometimes occurs, especially since the index which is co-incidental to the valuation date is a suspiciously round 100, but from what I can see that does not appear to have occurred.

Mr Inman's table

103. I can understand why Mr Inman sought to cast wide his net of comparable evidence. He was quite open in acknowledging its limitations, many of which equally apply to the use of the Solihull index. He was clear that nothing could be taken from it in terms of values per sq ft – only trends. But I am not persuaded that much if anything can be taken from it, largely for the reasons Mr Denyer-Green identified in cross-examination. The trends depend on rates per sq ft, and the rates calculated are derived from a range of sources of floor area – sales particulars, EPC reports and Promap (a digital mapping tool) – the latter being particularly unreliable in finding the internal floor areas of buildings. I place very little weight on this.

Comparable sales data

104. The majority of sales evidence which the experts referred to were in a switched-on world. That being the case, the weakness of Mr Barlow's approach is that he takes switched-on figures from comparable sales post-valuation date, and to convert them to switched-off he applies his percentage adjustment of 20%. Mathematically, it wouldn't matter whether he is at 10% or 50%, he would end up with the same result, because he then uses the comparison to justify his percentage reduction. That approach is entirely circular.
105. What is required is evidence of sales of bungalows in a switched off world. But there was a striking lack of evidence in this regard, which was surprising, and to an extent it leads me to a dead end in my quest for a comparison of switched off and switched on. It is disappointing that the experts were unable to unearth more evidence on bungalow sales in

a switched off world, although perhaps if they had managed to, it would not have been necessary for the Tribunal to determine compensation.

The experts

106. Given the lack of hard evidence, the credibility of the experts becomes more relevant.
107. I found Mr Inman's evidence disappointing. As I indicate above, nothing can really be drawn from his table. Of his comparable evidence, which encompassed only four "bungalows", it perhaps wasn't too much to ask that he would refer to the correct address of each of them, and that he would have realised that one of them was in fact a two-storey house and not a bungalow. There was also some confusion over the difference between mean and median.
108. I found Mr Barlow the more persuasive witness. He has lived and practised in the area for many years and has significant experience in compensation claims from various schemes. Whilst he had interpreted the law incorrectly, I place more weight on his valuation judgement than I do that of Mr Inman.

Standing back

109. I place significant weight on Mr Bennett's own account of the difference in noise pre and post works. Mr Barlow could also speak with personal experience of the change, and of standing in Mr Bennett's garden when aircraft were overflying. None of the airport's witnesses could match this.
110. There is no doubt in my mind that the use of the works would give rise to a diminution in value. But how much? We must not take account of other factors which would also have an effect – both valuation experts referred to other road schemes, and there is also HS2, currently being constructed but there was no evidence as to whether this was confirmed as a route at the valuation date.
111. I am also mindful that the prospective purchaser is highly unlikely to sit outside Oak Tree Lodge for hours on end, in the hope that wind conditions are such that aircraft would take off and land over the property. But should they happen to be viewing the property at a time that HWTC aircraft flew over, that would have a significant impact on their bid, in my judgment. The prospective purchaser would be aware of the works, and it would be in the back of their minds in forming a view as to value.
112. Mr Barlow had agreed 4-6% on M40 claims, and 7.5% for the Northern Relief Road. I accept his evidence that these schemes created a drone-effect of noise, rather than a series of loud incidences. In *Russell* the Tribunal awarded compensation equivalent to 4.67% of the switched off value – again for a road scheme. It is notable that this amounted to 60% of a total determined diminution of £65,000 which also included other factors. In *Aldridge*, the Tribunal adopted a "growth-foregone" approach. It is clear to me (see paragraph 100), that the value of Oak Tree Lodge has not increased to the extent it should have done. But as in *Russell*, not all of that can be put down to the physical factor of noise arising out of the works.

113. Mr Inman's £350 per sq ft was based on his four comparables. Although he thought it made no difference, one of those was a house, and he accepted that bungalows command a higher price per sq ft than houses. Having looked at Eastcote Lane, it seems to me that the properties are on very narrow plots (especially 23A, which as its number implies seems to have been squeezed into a garden). I think Mr Inman's high parameter of £370 is too low, allowing for the large, gated plot in which Oak Tree Lodge sits.
114. In my judgment the switched off value of Oak Tree Lodge is in the region of £400 per sq ft. That would generate a capital value in the order of £560,000. With a switched-on value of £485,000, that would mean a diminution of £75,000, or 13.5%. In all the circumstances of this claim, in my judgment that is an appropriate percentage reduction. I therefore determine compensation of £75,000.

P D McCrea FRICS FCI Arb

22 August 2022

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.