BRIEFING NOTE FOR STACC

Brian Ross - October 2017

STANSTED AIRPORT EXPANSION - HOMEOWNER COMPENSATION

This long running saga – some would use the word 'scandal' – dates back to 1985 when the Government decided that Stansted should be London's third airport. Permission was initially given (in 1986) for 'Phase 1' which would allow expansion to 8 million passengers per annum ('mppa'). This would be followed by 'Phase 2' which would allow expansion to 15mppa.

By comparison, Stansted handled just 0.5 million passengers in 1985.

Phase 1 was effectively completed when the new terminal building opened in March 1991 and, in accordance with its obligations under the Land Compensation Act 1973, Stansted Airport Limited (STAL), as the *Compensating Authority*[1], agreed to pay compensation to local residents for the relative devaluation of their properties arising from Phase 1. The first payments became due in March 1992, i.e. 12 months after Phase 1 was completed, as stipulated in the Act.

Over the next two years' negotiations to determine the amount of compensation due took place between STAL's agents, Strutt and Parker, and a number of chartered surveyors familiar with local property values, appointed by property owners and paid for by STAL. Their first task was to identify where devaluation had taken place, and agreement was reached on an area including most of the Hallingburys, Broxted and Burton End and parts of Thaxted, Hatfield Broad Oak, Hatfield Heath, Birchanger, Takeley, Elsenham and Bishops Stortford. Comparative valuations were carried out and differences of 2% were found in the outlying areas, 10%-12% in areas such as Great Hallingbury and considerably more for properties very close to the airport.

Some 1268 claims were settled including:

Little Hallingbury	298	Great Hallingbury	216
Bishops Stortford	159	Thaxted	155
Broxted	132	Takeley	90

In April 1999, Stansted was given formal consent for Phase 2. Within three months it had exceeded the 8mppa threshold and within three years it had exceeded the 15mppa Phase 2 threshold. Stansted has continued to handle in excess of 15mppa every year since 2002.[2]

In 2003 the airport was given permission to handle 25mppa and in 2008 it was given permission for 35mppa. In 2017 Stansted will handle about 26mppa. However, in compensation terms local residents continue to live next to an airport handling less than 8mppa.[3]

When Stansted reached its permitted Phase 2 throughput of 15mppa in 2002, local residents expected this to trigger the second round of compensation payments. But that was not to be. From 2002 until 2016 STAL repeatedly advised potential claimants that no compensation claims would be considered until 12 months after *all* the relevant works[4] approved for Phase 2 were completed. For a period of 14 years STAL gave this same answer to STACC, local councillors and MPs whenever the question about Phase 2 compensation was asked, for example:

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[1] For the avoidance of doubt, the sale of STAL by BAA to MAG has no legal bearing on this issue: STAL's position as the Compensating Authority is unchanged.

[2] In handling more than 15mppa in 2002 STAL breached its planning consent because permission to grow beyond 15mppa was not granted until 2003.

[3] It is understood that one Phase 2 compensation claim was recently settled with an elderly couple where there were difficult personal circumstances. The claim was settled on an ex gratia basis, against the advice of their advisors.

[4] Under the Act "relevant works" at an airport means works which provide additional runway capacity, including aircraft taxiways, stands and aprons.

2004

"On land compensation, you will probably recall a presentation to STACC on the continued development of Stansted. You are right in saying that we do not now envisage completing works on the [Echo] aprons and taxiways until 2008/2009 and only after that will consideration be given to compensation."

Mike Clasper, Chief Executive of BAA
Letter to SSE Chairman, 7 June 2004

2006

"In response to comments by a Member, it was indicated that some preliminary work on Taxiway Echo stands was underway, but that area would not become fully operational until 2009/10. That would then be the trigger point for land compensation claims."

Terry Morgan, Stansted Airport Managing Director
Extract from STACC minutes, 26 July 2006

2008

"… at present we anticipate that Echo will be completed in 2011/2012. At that time, individuals will be able to submit claims under Part 1 of the Land Compensation Act 1973, demonstrating any diminution in value of their properties arising from the use of the new infrastructure which has been constructed and which forms the "Scheme"."

Stewart Wingate Stansted Airport Managing Director
Letter to local resident, 14 November 2008

2009

"Members noted that the crucial element which would trigger payments was completion of the Echo cul-de-sac. Members were concerned about the time being taken to do this despite it being part of the planning application to increase use to 15 million passengers per annum (mppa). ... STAL management undertook to consider the points made but indicated that they were very unlikely to agree to make payments unless and until they were legally obliged to do so."*

David Johnson, Stansted Airport Managing Director
Extract from STACC minutes, 28 October 2009

2011

"The first scheme for land compensation followed the opening of the "new" airport in 1991. … A second scheme was identified which includes the completion of Charlie, Delta and Echo cul-de-sacs together with the outer taxiway. Some of these developments have been completed but as traffic volumes have declined the need for such infrastructure has repeatedly slipped back and so therefore has the completion date of the second scheme. It is the completion date and bringing into use of this asset which triggers the compensation process. …"

Nick Barton, Stansted Airport Managing Director
Letter to local resident, 14 January 2011

STAL originally advised that Phase 2 was expected to be completed by 2002 but one small element of Phase 2, part of the Echo development, has still not been completed. This became known as 'the golden rivet' and, in March 2016, STAL advised the Lands Tribunal that it did not expect the Echo development to be needed until the mid-2020s. This would be more than two decades later than originally planned and more than two decades after the airport exceeded 15mppa which, according to STAL's 1999 planning submission, needed the Echo development.

The Farnborough Case

In 2015 the owners of Farnborough Airport were challenged in the High Court by local residents over the non payment of homeowner compensation. This was also a case involving the 'golden rivet' issue. The case was presided over by Martin Rodgers QC, Deputy President of the Upper Tribunal (Lands Chamber), who rejected the concept of a 'golden rivet'. He ruled that the Land Compensation Act did not require **all** the relevant works for which planning approval had been granted to be completed before the airport's obligation to pay compensation was triggered.

STAL states in its note to the STACC Chairman that the Farnborough judgment requires there to be four separate 'relevant' dates for Stansted Phase 2 compensation claims. This is untrue. STACC members cannot be expected to read the 97-page judgment but may instead wish to ask STAL to explain where this requirement is stated or implied in the Farnborough judgment. STAL has simply and unnecessarily added another layer of complexity to the compensation process. This is viewed by many as part of STAL's strategy to make it as difficult as possible for claimants to formulate their compensation claims and provide detailed valuation evidence. (There are reports that this now includes a requirement for claimants to jump through noise measurement hoops.)

The Stansted Case

Throughout 2015, a local Stansted resident had been arguing with STAL that an entitlement to compensation was triggered at Stansted on 1 March 2007 (if not earlier) and in early 2016 he asked the Lands Tribunal for a ruling on this point. STAL initially rejected this argument and continued with its golden rivet defence right up until the case management hearing in the High Court on 18 March 2016. Martin Rodgers QC was once again the presiding judge. Brian Ross accompanied the local resident to the hearing, attending on behalf of SSE.

In the course of the hearing STAL unexpectedly changed its position and conceded that 1 March 2007 was indeed a 'relevant date' which should have triggered an obligation by the airport to pay compensation. Counsel for STAL also conceded that STAL had misled local residents for many years over this issue, stating in its written submissions:

> "*It is the Compensating Authority's* [i.e. STAL] *pleaded case, with which the Claimants agree, that the evidence suggests that, since the mid-1990's, STAL were clear and consistent in advising local residents that Part 1 claims could, and should, not be made until the final completion of the public works authorised by its Phase 2 planning permission."*

Despite the above, STAL signalled its intention at the hearing to invoke the Limitation Act - i.e. the standard six-year time limit for any claim to be submitted. This prompted Martin Rodgers QC (presiding) to remark:

> *"So, after years of telling people you can't claim until the works are complete, you're now saying Tee-Hee - you're too late…?"*

Clearly embarrassed, counsel for STAL replied that he was merely following client's instructions.

Developments since March 2016

Immediately following the hearing on 18 March 2016, SSE requested an early meeting with the STAL CEO. That meeting finally took place on 4 May 2016, where SSE made clear that it would initiate legal proceedings if STAL now intended to resist compensation claims on the grounds that they were too late, after years of resisting them on the grounds that they were too early. SSE agreed to defer legal proceedings for 28 days to allow time for STAL to announce the introduction of a compensation scheme.

On 2 June 2016, STAL finally notified SSE that it had agreed to introduce a compensation scheme. STAL formally announced this in the local press the following week and provided details of its proposed compensation arrangements the following month.

STAL states in its recent update for the STACC Chairman that it was the Farnborough judgment which prompted it to introduce compensation arrangements. STACC members might care to note that STAL's decision to introduce compensation arrangements came 10 months after the Farnborough judgement and 28 days after SSE's ultimatum.

It is, of course, a step in the right direction that STAL is, at last, prepared to consider compensation claims but there are numerous difficulties over the manner in which claims are being handled by STAL, or more particularly, its lawyers Squire Patton Boggs.

The Public Question

The public question (PQ) submitted to the October 2017 STACC meeting highlights one of the main issues regarding the approach being taken by STAL to compensation claims, and a PQ submitted to an earlier STACC meeting related to the same issue, which is not so much a legal point as a moral one.[5]

In order to qualify for compensation under the Land Compensation Act a claimant must have a 'qualifying interest' in the property at the time the claim is submitted. Inevitably, in the period since 2002, many people who would otherwise have been entitled to compensation are no longer in possession of their properties and so no longer have a 'qualifying interest'. Some have died and the property has been sold; some have been forced to sell their properties, for example as a result of divorce or moving to a new job; others have voluntarily moved home.

The public announcement which STAL made on 9 June 2016, opening the door to compensation claims, should have been made 14 years earlier. Instead, local residents were repeatedly misled by STAL over the years. From 2002 until 2016 the door was firmly shut to compensation claims.

Most fair-minded people would consider it wrong for STAL to profit from its consistent refusal to consider compensation claims from local residents over the period from 2002 to 2016, and for local residents now to be expected to pay the price. If for example a home near the airport was sold in 2015 for £300,000 which STAL's chartered surveyors agreed would have been worth £350,000 had it not been for the Phase 2 expansion of the airport, then the seller suffered a £50,000 loss. Should that loss not be recoverable if in all other respects the claim would be valid, the exception being the ongoing residency requirement? Would it not be more reasonable for STAL to be prepared to consider each claim of this type individually on its own merits – perhaps with a 12-month time limit for the submission of such claims.

STACC is invited to consider this question from a moral standpoint and a CSR standpoint.

BRR – October 2017

[5] It is not inconceivable that local residents could mount a legal challenge on this issue, but the cost would run into several hundred thousand pounds and so the prospect of a legal challenge looks highly unlikely, at least at this stage.