

Held to ransom

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Alex O'Connor, Helen Ingram and Stephanie Green ask how ransom strips should be valued, and look at some ways developers can deal with them

The valuation of ransom strips has long proved to be a difficult process. In order to work through the various factors that should be taken into account in any valuation, this article proposes consideration of the following scenario.

A surveyor is instructed by a developer, which has recently acquired a plot of land for a multimillion-pound development only to discover shortly after completion of the transaction that it can only access the site through a small adjoining parcel of land owned by a neighbouring individual. The client wants to negotiate the purchase of this land to be able to proceed with its development.

Unsurprisingly, the difficulty arises when the neighbour learns of the importance of the land to the developer and seeks a sum that far exceeds its actual value.

Valuation precedent

There is no statutory framework governing the valuation of ransom strips; the parties are free to negotiate whatever sum they consider acceptable. However, the starting point is often taken to be the seminal case of *Stokes v Cambridge Corporation* [1961] 180 E.G. 839. In this instance, the judge took the view that the appropriate purchase price was one-third of the increase in the value of the land to be developed as attributable to the acquisition of the ransom strip.

The relevant sum was calculated as one-third of the value of the development site, having deducted a developer's profit, a further sum for the costs of 'roads, sewers, fencing, consents and contingencies', and the value of the site without the ransom strip. This calculation has set the precedent for countless subsequent valuations.

To apply this methodology to the scenario set out above, the developer's land was initially valued at ?500,000. After the development works, and having deducted the appropriate developer's profit and costs as described in the paragraph above, the estimated value will be ?5m; this is a difference of ?4.5m. The ransom strip is worth ?100,000; however, in applying Stokes, many would take the view that the appropriate valuation for the ransom strip would be ?1.5m, as one-third of ?4.5m.

There is no statutory framework governing the valuation of ransom strips

On the facts, Stokes related to an acquisition by compulsory purchase, and it can therefore only serve as guidance rather than as a hard and fast rule. Indeed, there have been numerous judicial references to the Stokes approach as a principle of valuation, not of law; see, for example, *Wards Construction (Medway) Ltd v Barclays Bank Plc and Kent County Council* [1994] 68 P. & C.R. 391.

Moreover, when deciding Stokes, the tribunal took additional factors into account. For example, it was of the view that the Cambridge Corporation held land beyond the ransom strip that would also benefit from the intended development works. As a result, it considered that the purchaser would be willing to pay more for the ransom strip as this would not only benefit the current development site but also potentially subsequent development works on the additional land. This is a clear indicator that the tribunal was not wedded to the principle of a one-third valuation, but rather that it took the view, on the specific facts of the case, that one-third was the appropriate proportion in that instance.

Increasingly, many in the property sector are taking the view that applying the Stokes rule is not synonymous with applying a one-third valuation; rather, that the process of valuation depends on the particular circumstances and can therefore vary immensely between cases.

Considering the angles

There are many other factors that may have an impact on the valuation of a ransom strip. In *Batchelor v Kent County Council* [1988] 56 P. & C.R. 320, the Lands Tribunal considered whether there would be any alternative market for the land than for the use intended by a particular purchaser, and whether there were potential other points of access to the site.

Where there is more than one point of access or the possibility of negotiating a new point of access, the developer may be in a stronger position because it is not reliant on the purchase of the ransom strip. When the case was remitted to the Lands Tribunal, the valuations put to it were on the basis of the ransom strip being valued at 50% of the uplift in value of the development land in *Batchelor v Kent County Council* [1992] 1 EGLR 217. Likewise, in *Ozanne and ors v Hertfordshire County Council* [1989] 43 E.G. 182, the value of the ransom strip was found to be 50% of the uplift. While the above cases all relate to compulsory purchase, the principles can be applied to ransom strips.

In the recent case of *Persimmon Homes Limited v Hillier and ors* [2018] EWHC 221 (Ch), the court considered the significance of planning permission on the valuation of a ransom strip. One of the questions before the court was what the claimant would have paid for a ransom strip in October 2012. At that time, planning permission for any development works had not yet been granted, so the court found it appropriate to apply a planning risk discount to the purchase price, to account for the risk that the claimant would have taken in purchasing the land without the security of knowing that it would be able to develop the site ? in other words, to take account of the anticipated value of the land being lower than its eventual development value.

The case law cited in this article does not present all the possible valuations for a ransom strip, neither is it an exhaustive list of the factors to be considered when valuing the land. But it gives an indication of the complexity of the process, and why care should be taken when instructed on a valuation.

Digging in

What can a developer do in the face of a titleholder that simply refuses to sell, or insists on an unacceptable price?

In some circumstances it may apply to the local planning authority to authorise a compulsory purchase. One basis for such an application is [section 226 of the Town and Country Planning Act 1990](#) . This sets out some of the grounds on which a local planning authority may exercise its power to acquire land on a compulsory basis.

The condition most likely to be relevant under the act is where the acquisition will support the development, redevelopment or improvement of the land. The local planning authority must also be satisfied that the works are likely to promote or improve the economic, social or environmental wellbeing of the area. It should be noted that there are further requirements, not set out here, that must be satisfied in order for compulsory acquisition requests to be authorised.

Compulsory acquisition is not a simple solution to the problem of ransom strips as, even where the relevant authority authorises such acquisition, anyone with an interest in the land must be notified and may have the right to object. It is only after any objections have been heard that the compulsory acquisition order can be confirmed. Once the order has been finalised, the parties may negotiate the appropriate compensation.

In the event that the owner of a ransom strip is unknown then the developer may be able to obtain indemnity insurance to protect against the possibility of them coming forward at a later date. The insurer will carry out its own valuation and enquiries in order to assess the premium for the policy. However, this cover may not be available where the identity of the owner is known and it is even less likely to be available where they are aware of the situation.

Under advice

In short, there is no easy response to the question of how much a ransom strip is worth. As in any commercial transaction, land is only worth what another party is willing to pay for it, and where the buyer has no alternative then any attempt to negotiate the purchase price is likely to prove expensive. For this reason, it is essential to ensure that a client has always been fully advised on the rights required for a site before its acquisition, and while it is still free to look elsewhere if the costs prove too high.

To return to the original scenario, a developer that has already acquired its site, and for which the losses incurred in terminating or relocating the project would be greater than the price of the ransom strip, is likely to be at the mercy of the owner unless there are particular extenuating circumstances or it can demonstrate that it is appropriate for the local planning authority to exercise its compulsory purchase powers.

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Further information

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- This feature is taken from the [RICS Property journal](#) (July/August 2018)
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