Ransom payments

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Introduction

Ransoms may not be the stuff of the Mafia in England but they are still fraught with difficulties for valuers because there are not many rules about the conduct of the negotiations.

Do the Red Book and Stokes v Cambridge provide the answers?

Valuers might ask whether these major planks of valuation philosophy provide the answers. Unfortunately, they do not. The Red Book ought to be useful in some specified circumstances but Stokes v Cambridge does not indicate the value of a ransom. The courts have said that 'it provides an optional starting point for valuation.'

What is a ransom in the context of property?

The usual example quoted is that of an 'access strip', where a parcel of land is required to facilitate a highway access to a development site. Typically, the land required is small in area, compared to the land proposed for development. However, as quoted in Ozanne v Hertfordshire CC,
'...the precise area of the ransom strip is not material to the ransom value.'

An access strip has been likened to a key to unlock a room: it does not matter how big the room is. But Batchelor v Kent CC says the size of the room does matter. Notwithstanding this particular complication, where a standard access is required, ransoms can now more easily arise by the operation of planning law and section 106 agreements. Planning agreements are often required by local authorities to facilitate off-site improvements to infrastructure associated with development

proposals- even though some of these 'associations' are very tenuous.
An example would be where off-site road improvements are required by a section 106 agreement. If these improvements involve land to be acquired from a third party, that third party could claim to have a 'ransom' over that element of the development proposal linked to the improvements. In that situation, Pointe Gourde would undoubtedly be quoted by the development party. Pointe Gourde is a valuation principle arising from the legal case of that name (Pointe Gourde v Crown Lands). The principle has been expressed by the Privy Council in the following terms:
'Compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition.'

This statement immediately begs two questions:

1. What if the negotiations are not being undertaken under the shadow of compulsory purchase?
2. What exactly is 'the scheme' in any particular case?

In a recent compulsory purchase Lands Tribunal case (Crown House v Chester), the Tribunal rejected a cry of Pointe Gourde. So Pointe Gourde does not necessarily work against ransom claims arising from topographical facts.

Ransoms can arise in other ways, such as where a third party landowner has rights over land which have to be extinguished to facilitate development, for example sporting rights or rights of way.

Does the provision of essential services, such as sewers across third party land, generate a ransom payment?

No, they don't. This is because such services can be statutorily requisitioned and the basis of compensation is then the damage done to the servient land, as opposed to any value implications benefiting the dominant land. This tends to be the equivalent of winning £10 on the lottery instead of the jackpot ransom!

What are 'multi-access' or 'single access' ransoms?

A closer reading of Stokes v Cambridge introduces the concept of 'multi-access' or 'single access' ransoms. A number of district valuers have personally advised me that 50% of the development gain accruing the land-locked parcel is the correct valuation of a single access ransom and this draws on the Stokes v Cambridge case. In Stokes v Cambridge, a figure of one third (33%) was settled on, but there was an element of alternative access available. In addition, the whole case was considered in the context of compulsory acquisition, something which often does not apply in the real world of development.

Is the figure of 50% the starting point for negotiations?

Apparently not. In the Wards v Barclays case, 25% was quoted as an appropriate starting point for a very large single access situation. The figure was then reduced to 15% because it was multi-access and multi-owned backland. It was then reduced by a further one third to reflect the multi-risk probability.
In another old case, Nash v Basildon Corporation, a ransom payment was put at 60% of the development gain.
This is all very confusing and not rooted in any proper scientific analysis.

Where does 50% come from as a valid idea in the first place?

Perhaps it comes from a willing seller consideration under rule 2 of the Land Compensation Act (1961). But that conflicts with reality in most cases, where the negotiations would depend on the relative strengths of the parties, including their financial positions and the nature of their identities. Consider the difference if the party were a rich Oxford College or else an elderly cash-strapped individual.
Also, the '50% rule' could conflict with Horn v Sunderland, which raises the principle of equivalence where compulsory purchase is concerned.

What rules apply in the real world, where compulsion is not an option before the acquisition?

In the Batchelor v Kent case an inducement approach was described but ultimately rejected as the basis for valuation. The idea behind inducement was that a multiplier of agricultural value of three times would apply, plus a sharing of savings in construction costs arising from the availability of the ransom land.
This is a sort of quantity surveyor's approach to cost, which is wrong because it misses out on value consideration. In particular, it does not address the sharing of the profits arising from the scheme, a concept referred to in Stokes v Cambridge and reiterated in Ozanne v Hertfordshire CC.

It might be thought that in non-compulsory purchase deals these principles do not matter, but this is not the case. All deals must be concluded against a background of at least some rules. Furthermore, applying legal considerations and statutory constraints can lead to the correct approach. Consider the following examples:

(1) Land is held by a local authority which has a statutory responsibility to achieve the best price for a ransom strip or indeed any other property interest. This arises from section 123 of the Local Government Act 1972.

(2) Development land is secured by a prospective developer under the terms of an option agreement, where the valuation of the subject land is referred to

arbitration. It could then theoretically arrive in the Lands Tribunal if the parties cannot agree on, say, the acquisition of a third party ransom land.

In these circumstances, where the acquisition of a ransom strip needs to be considered, the limited rules laid down by the leading cases must be carefully considered.

Is the figure of 50% of a development gain for a ransom strip truly what would happen in the real world?

The question of incentive springs to mind, particularly where the development land is of a much larger size than the ransom strip.
The second element to be considered is the question of a share of the profits arising from the scheme. Most of the legal cases mention a proportion of development gain arising, being payable to the ransom holder. But in reality the ransom strip controls a share of the profits arising from the scheme, so the ransom holder should consider sharing any profits. That would also include sharing in the risks of the scheme. At the very least, this introduces the concept of payment over time so that any ransom payments would be drip fed.

Lord Justice Nourse in the Court of Appeal said in the Wards case that he remained mystified by certain aspects of valuation. Certainly, ransom cases provide a number of conundrums. But before valuers despair, remember that in Southern Italy, in only about half the recent cases where ransoms were paid out were the victims released alive and well. That puts our difficulties into perspective!

Case references

- Batchelor v Kent CC (1992 03 EG 127 and 1992 04 EG 138)
- Crown House Developments v Chester City Council (1997 09 EG 155)
- Horn v Sunderland (1941 2 KB 26)
- Nash v Basildon Corporation (1969 12 RVR 53)
- Ozanne v Hertfordshire CC (1992 38 EG 158)
- Pointe Gourde Quarrying and Transport Company Limited v Sub Intendent of Crown Lands (1947 AC 565 PC)
- Stokes v Cambridge (1961 180 EG 839)
- Wards Construction (Medway) v Barclays Bank plc (1994 40 EC 135)