

Planning law update

Compulsory Purchase Orders: Legal Issues in Compensation
Neil Robson, Partner, Head of Property
Carolyn Akerman, Solicitor

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Summary

- Compulsory Purchase Orders: The Basics
- Compensation Principles
- Compulsory Purchase Orders: Legal updates

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Compulsory Purchase Orders: The Basics

CPO powers

- » Who has compulsory purchase powers?
 - » A range of public bodies including local authorities, statutory undertakers, some executive agencies (e.g. the HCA) and health service bodies.
- » Where do their powers come from?
 - » S.226 Town and Country Planning Act 1990- Local authorities may compulsorily purchase land to facilitate the development, redevelopment or improvement of land or to achieve the proper planning of an area;
 - » S.239 and S.240 Highways Act 1980- Local highway authorities may compulsorily acquire land to construct/improve highways
 - » S.17 Housing Act 1985- Housing authorities may compulsorily acquire land, houses or other properties to provide housing accommodation

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Compulsory Purchase Orders: The basics

The use of CPO powers

- » The use of the CPO must be justified to the Minister/Secretary of State responsible for confirming the order by demonstrating that:
 - » The CPO is authorised by statute
 - » There is a compelling case in the public interest that sufficiently justifies interference with Article 1 (protection of property) and Article 8 (protection of a person's home)
 - » Adequate resources are likely to be available to implement both the CPO and the CPO scheme within a reasonable time frame
 - » There is a reasonable prospect of the CPO Scheme going ahead
 - » There is no alternative site or alternative means of bringing about the objective of the CPO
 - » The CPO is a last resort

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Compulsory Purchase Orders: The basics

Implementing a CPO & making a claim

- » Notice to Treat and Notice of Entry or General Vesting Declaration
- » A claim must be in writing and state the exact nature of the claimant's interest in the land (S.31 LCA 1961).
- » The claim should also distinguish between separate heads of claim and identify how the amount of compensation claimed under each head is calculated.
- » If a claimant fails to respond to a Notice to Treat with a notice of claim within 21 days or agreement cannot be reached on the amount of compensation, the claim can be referred to the Upper Tribunal.
- » 6 year limitation period for compensation claim

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Compensation Principles

Compensation generally

- » All parties with an interest in the land or rights in respect of land will be entitled to submit a claim form (s.4 LCA 1961).
- » Compensation based upon the principle of "equivalence".
- » Relevant legislation:-
 - » Land Compensation Act 1961;
 - » Compulsory Purchase Act 1965;
 - » Land Compensation Act 1973;
 - » Acquisition of Land Act 1981;
 - » Housing and Planning Act 2016.

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Compensation principles

Valuation date

- » The valuation date for the purpose of compensation is the earlier of:
 - » The date the authority enters on and takes possession of the land; or
 - » The date when the assessment of compensation is made, either by agreement or by the Tribunal (s.5A Land Compensation Act 1961)

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Compensation principles

Compensation principles

- » Compensation comprises three main elements:
 - » 1) the market value of the land;
 - » 2) any loss caused by reason of losing possession of the land; and
 - » 3) Loss of value caused to other land held by the claimant by reason of it being severed from the land taken or otherwise detrimentally affected
- » Compensation will be a global figure based upon various heads of loss
- » Also note there are supplemental forms of compensation:
 - » Home loss payments;
 - » Farm loss payments;
 - » Compensation for disturbance where no interest in land is held by the claimant

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Compensation principles

Rules for assessing the market value (S.5 Land Compensation Act 1961):

- » 1) No allowance for compulsory acquisition;
- » 2) The value is the amount which the land might be expected to realise if sold on the open market by a willing seller;
- » 2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle as set out in new section 6A;
- » 3) No account is to be taken of the special suitability or adaptability of the land for any purpose if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from ... the requirements of any authority possessing compulsory purchase powers;

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Compensation principles

- » 4) No account of any increase in value attributable to a use which is contrary to law, which could be prevented by a court, or which is detrimental to the health of the occupants or to public health;
- » 5) Where land is devoted to a purpose of such a nature that there is no general demand or market, the compensation may, if the Upper Tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;
- » 6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land.

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Compensation principles

- » New s6A Land Compensation Act
- » 5 rules setting out the "No-Scheme" principles to be known as "the no-scheme rules"
 - » Rule 1 – it is to be assumed that the scheme was cancelled on the relevant valuation date;
 - » Rule 2 – it is to be assumed that no action has been taken by the acquiring authority wholly or mainly for the purposes of the scheme;
 - » Rule 3 – It is to be assumed that there is no prospect of the same scheme, or other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function / CPO;

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Compensation principles

- » Rule 4 – It is to be assumed that no other projects would have been carried out in the exercise of a statutory function / CPO if the scheme had been cancelled on the relevant valuation date;
- » Rule 5 – If there was a reduction in the value of the land as a result of:
 - a) the prospect of the scheme (including before the scheme or the compulsory acquisition was authorised), or
 - b) the fact that the land was blighted as a result of the schemethat reduction is to be disregarded.

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Compensation Principles

Disturbance

- » Typically disturbance may be claimed for the following:
 - » Costs incurred in moving stock and/or machinery to new premises.
 - » Telephone/computer removals.
 - » Architect's fees in surveying new premises and legal fees for purchase.
 - » Stamp duty for new premises.
 - » Costs in maintaining two properties during removal, including payment of rates.
 - » Loss of goodwill and temporary loss of profit.
 - » Costs incurred by a disabled person in modifying new premises to meet the disabled person's special needs.

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Compensation Principles

Disturbance

- » Claimants should keep detailed records of the time incurred and any additional payments made such that this can be used as evidence at the Tribunal
- » *Behic and others v Northumberland CC* [2017] UKUT 269 (LC)

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Compensation Principles

Disturbance

- » Who can claim disturbance? The individual/business must:
 - » Occupy the land being compulsorily acquired;
 - » Have an estate or interest in the land being compulsorily acquired;
 - » Lose possession of the land because of the CPO; and
 - » Not include in the claim any item which is inconsistent with the basis on which the land has been valued, or otherwise duplicates elements of the claim.
- » What is the position if a person is displaced from the land but has no interest in it?
 - » E.g. a tenant who is holding over after their lease has expired
- » How is disturbance calculated for different tenancies (protected and unprotected business tenancies/ short term tenancies / licensees)?

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Compensation Principles

Severance and injurious affection

- » These principles may be relevant where there is acquisition of part only.
- » Severance occurs when the land acquired contributed to the value of the land retained.
- » Injurious affection occurs where there is a depreciation in value of the retained land due to the construction on and use of the land acquired for the scheme.
- » To work out the compensation due for these elements use the "before and after approach".
- » Also need to consider betterment.

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Compensation Principles

Material Detriment

- » Where part only of a property/land is being acquired, you may require the authority to acquire the whole where the part retained will be less useful/less valuable to a significant degree.
- » A counter-notice can be served on the acquiring authority.
- » The acquiring authority may then either withdraw, take all the land or refer the matter to the Upper Tribunal (Lands Chamber).
- » The Housing and Planning Act 2016 introduced new procedures in respect of this.

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Compensation Principles

Fees

- » What fees can be claimed from the acquiring authority?
 - » The reasonable fees of a surveyor incurred in preparing and negotiating a compensation settlement;
 - » Solicitors fees for any conveyancing work undertaken in respect of the transfer of the land.

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Compensation Principles

Planning Assumptions

- » The following planning permissions can be assumed:
 - » Any existing planning permission for the property;
 - » Any permitted development which has not yet been implemented;
 - » Any development which would be in accordance with an allocation in a development plan;
 - » The development which the acquiring authority proposes for the land.
- » Where there is any disagreement as to the planning permission to be assumed, a Certificate of Appropriate Alternative Development may be applied for.

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Compensation Principles

Advanced payments of compensation

- » An acquiring authority **may** make an advance payment of compensation if a request is made by a claimant.
- » The acquiring authority **must** make an advance payment if, before or after the request is made, the acquiring authority give notice of entry or execute a GVD.
- » In most cases, an advance payment must be made before the end of the day on which the notice of entry is given or a GVD is executed or, if later, before the end of two months from the day on which the authority receive the request for the advance payment.
- » The advance payment must be 90% of the acquiring authority's estimate or 90% of the agreed amount of compensation

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Compensation Principles

References to the Upper Tribunal (Lands Chamber)

- » References to the Upper Tribunal cannot be made by the claimant until one month has elapsed after the date of actual or deemed service of the Notice to Treat or of the making of the claim if there is no service of Notice to Treat (Rule 28(6) Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010).
- » Claimants should complete Form T371 (Guidance Leaflet T604).
- » See Thomas Newall Ltd v Lancaster City Council [2016] EWCA Civ 31 for a useful example of the compensation process.

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Compensation Principles

Timing of negotiations

- » When should negotiations be commenced?
 - » Advisable to engage with the acquiring authority at an early stage.
 - » Seek to negotiate a settlement outside of the compulsory purchase process.
 - » DCLG Guidance
 - » "reasonable initial offers"

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Contacts/Questions



Neil Robson
Partner | Property

E: neil.robson@wardhadaway.com
T: 0191 204 4124



Carolyn Akerman
Solicitor | Property

E: carolyn.akerman@wardhadaway.com
T: 0191 204 4198

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