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Compulsory Purchase Orders

06 December 2017

Contents

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What is compulsory purchase?

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- Government departments and bodies with statutory powers possess the ability to compulsorily acquire land or rights over land. If the landowner is not willing to sell by agreement.
- i.e: Northern Ireland Housing Executive, Northern Ireland Electricity, Transport NI, Northern Ireland Water, etc.
- Must be for specific public interest purpose. Commonly, road development, urban regen, housing redevelopment, provision of health or educational facilities.

Use of compulsory purchase powers

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- NI specific
- The acquiring authority makes an application for a vesting order to relevant department. Department for Communities / Department for Infrastructure.
- The authority will publish a notice of intention to make a vesting order in two local papers in the area concerned.
- Must also write individually to the landowners affected.

Use of compulsory purchase powers

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- The notice of intention to vest will specify a period in which objections should be lodged.
- If objections are received, and not withdrawn, the acquiring authority may arrange a local inquiry.
- Reasons for objections:

1) Procedure not followed
2) Not necessary to acquire by compulsory purchase
3) Not made within the public body’s statutory authority
4) Human rights infringed

- N.B. Compensation is not a ground for challenge

Use of compulsory purchase powers

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- Important to object at this stage as there are very limited opportunities to challenge later in the process
- If local inquiry is supportive / none required: the vesting order is made.
- The authority must publish a notice that the vesting order has been made and where a copy can be inspected.
- If there is no challenge to its validity within 1 month, the vesting order becomes operative.
- Ownership of the land transfers on the operative date. The authority will write to the landowners with a copy of the vesting order and a compensation claim form.

- If a vesting order is made following a local inquiry, it may still be challenged in the High Court.
- The challenge is made by way of statutory review and is strictly limited in terms of time, form and grounds.
- Time limit: one month from publication of the notice of making of the vesting order.
- The High Court is not concerned with the merits of the decision to make the vesting order. Grounds for challenge are very limited – generally restricted to procedural grounds

Compensation Code

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- Rights to compensation and methods and procedures for assessing the amount.
- Commonly know as the compensation code.
- Misnomer.
- Collective term for principles derived from legislation, case law and established practice. Including:
- Lands Tribunal and Compensation Act (NI) 1964
- Planning and Land Compensation Act (NI) 1971
- Land Acquisition and Compensation (NI) Order 1973
- Land Compensation (NI) Order 1982

Compensation Code

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- The general principle is equivalence. No landowner should be in any worse, or better, financial position after the acquisition than they were before.
- The valuation date is the date the title to the land vests in the acquiring authority. No adjustment for anything happening after this date.
- Disputes over compensation are dealt with separately from objections, at the Lands Tribunal

Compensation when land is taken

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- The general principle of equivalence
- The effect of the vesting order on the value of the property is ignored. The value is based on the open market value without any increase or decrease attributable to the development resulting in the vesting order.
- In Northern Ireland, the valuation date for the assessment of compensation is the date the title vests in the acquiring authority. This is known as the operative date of the vesting order.

Compensation when land is taken

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- Compensation can be claimed under the following 'Heads of Claim':
- **Value of Land Taken**;
- **Severance and Injurious Affection**: The depreciation in value of land retained where part only is vested;
- **Disturbance**: Only available to occupiers; and
- **Fees**: The reasonable fees of a surveyor and solicitor

Compensation when land is taken

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- Land with a general market or demand:

- Disregard any effect on value due to compulsory purchase
- Value is based on what the land might be expected to realise if sold on the open market by a willing seller. However, it is assumed that it would only be sold at the best price that could be reasonably achieved.

Compensation when land is taken

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- Land with a general market or demand:

- Value is based on the existing use of the property.
- The value can include the development value when it can be proved the development value would have existed in the absence of the scheme requiring the compulsory purchase.
- This is also applies to any inherent value that could be obtained by selling to anyone with a special interest in the property e.g. A ransom strip

Compensation when land is taken

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- Land with a general market or demand:
- Value is based on the assumption that planning permission would be granted for particular uses. These include:

1) Existing permissions;
2) Permitted development, not yet implemented;
3) Development in accordance with a development plan; and
4) Development which the acquiring authority proposes.

- If there is a disagreement about the panning permission to be assumed, request a Certificate of Appropriate Alternative Development from the local planning authority.
- Local Area Plan: Note status of BMAP and new local area plans

Compensation when land is taken

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- <u>Land with a general market or demand:</u>

- Any increase in value attributed to a use which is unlawful may not be taken into account.
- This includes a use that would be subject to planning enforcement proceedings. If a property does not have planning permission for the use it requires, no account is taken of any increase in value due to that use if it could be terminated through enforcement proceedings.
- This would not apply where a Certificate of Lawful Use is in place

Compensation when land is taken

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- Land with no general market or demand

- If there is no general market or demand, it is not possible to use the market value approach.
- Compensation is determined on the basis of the reasonable cost to reinstate the use elsewhere.
- Unlikely to apply to a business premises. Examples may include a church or the specialised premises of a club.

Compensation when land is taken

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- Land with no general market or demand

- Four tests to justify payment of the reasonable cost of reinstatement:

1) Must be no general market or demand for the purpose
2) Must be used for a purpose that continues if not acquired
3) Must be a bona fide intention to reinstate
4) If the reinstatement cost is disproportionate to the entire scheme, reinstatement based compensation may not be allowed. This is at the discretion of the Lands Tribunal

Compensation when land is taken

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- Acquisition of part only: severance and injurious affection

- If part only of a portion of land is acquired, there may be additional entitlement to compensation in respect of the adverse effect on the land retained.
- Compensation is for the depreciation in value of the retained land and is referred to as severance and / or injurious affection.

Compensation when land is taken

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- Acquisition of part only: Severance and injurious affection
- **Severance** is when the land being acquired contributes to the value of the land retained. So, when severed, the retained land loses value.
- **Injurious affection** is the depreciation in value of retained land as a result of the proposed construction and use of the land acquired for the scheme.
- Value can be simultaneously reduced by both severance and injurious affection.

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- <u>Acquisition of part only: Equivalence</u>

- For part only acquisitions, the general principle of equivalence is satisfied by a before and after approach.
- The value of the whole of a property is agreed in a ‘no scheme world’ before acquisition and compared to the value of what is left in a ‘scheme world’ after acquisition.
- The difference between the two values is the compensation payable.

Compensation when land is taken

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- <u>Acquisition of part only: Betterment</u>
- The opposite of injurious affection.
- Where the scheme of the acquiring authority may increase the value of retained lands. The increase in value may be used to offset compensation payable.
- If the enhancement in value of retained land is equal to or greater than the compensation, no compensation is payable. An acquiring authority cannot require a landowner to pay them

Compensation when land is taken

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- Acquisition of part only: Material Detriment
- The owner of retained lands may make a claim for material detriment. This requires the authority to acquire the remaining area of the property.
- Must be made within six weeks of the operative date of the vesting order.
- The retained part must be less useful or valuable in a significant degree.
- Any disputes will be determined by the Lands Tribunal

Compensation when land is taken

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- <u>Disturbance Compensation</u>

- Compensation is due for the losses incurred by being disturbed from lands.
- Only applies if the compensation for the land taken is based on existing use value. N/A if at development value.
- Generally restricted to occupiers.

Compensation when land is taken

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- <u>Disturbance Compensation</u>
- For domestic properties, compensation is due for the cost incurred by relocating. The onus is on the claimant to justify any claim.
- For business premises, depending on the circumstances, compensation is based on the cost of relocating or extinguishing the business. As a general rule, the cost of total extinguishment is the ceiling to compensation (may be open to challenge).
- For agricultural premises, the future profitability of the business is in effect included within the value of the land. Therefore, no separate compensation is payable for extinguishment when compulsory acquisition occurs and relocation does not take place.

Compensation when land is taken

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- Disturbance Compensation

- Whether considering loss based on relocation or extinguishment, there is not a prescribed list of qualifying claims, each one is decided on its own merit.
- However, a claimant has a duty to mitigate their loss. Compensation can be adjusted if the acquiring authority can demonstrate the loss was greater than it should have been, due to the claimant's behaviour.

- Loss Payment
- Any vesting with an operative date after 12 May 2016 will be subject to a loss payment to those with a qualifying interest, either as an owner or occupier.
- An additional amount to recognise the inconvenience caused by the disruption.
- Whether as an owner or occupier, the payment is calculated using a varying percentage of the value of the interest in the land, based on the circumstances.

Compensation when land is taken

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- Occupation Without a Qualifying Interest in Land
- Limited right to compensation for a displaced claimant, in lawful occupation, but without a qualifying interest in land.
- These may include tenancies at will or licences.
- Compensation will include relocation costs and loss of goodwill.
- The amount of time the land would have been available for the business to occupy and availability of other suitable land is be considered.

Compensation when no land is taken

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- Compensation may also be payable in limited circumstances when no land is taken, but statutory powers are exercised.

- Compensation may be claimed for:

1) The reduction in value of land caused by the execution of public works; and
2) The reduction in value of land caused by the use of public works

Compensation when no land is taken

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- Reduction in Value: Execution of Works
- Compensation is payable when a loss occurs due to a right in property being taken away or interfered with. The injury done must:

1) Be authorised by a statutory power;
2) Be actionable at law, if done without statutory authority;
3) Be a physical interferance with a right attached to the land;
4) Be a sole result of the execution, not the use, of the works

Compensation when no land is taken

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- Reduction in Value: Execution of Works

- Compensation is assessed at the date the loss occurred. I.e. the date of the interference with the right in land.
- Need to demonstrate that the loss is a natural and reasonable consequence of the execution of the works.
- Compensation is payable on the reduction in value of the land which benefited from the right being interfered with.

Compensation when no land is taken

- Reduction in Value: Use of Works

- Commonly referred to as a “Part II Claim”. The right to compensation is provided for in Part II of the Land Acquisition and Compensation (NI) Order 1973.
- Only applies to public works covered by the Order.
- The claimant must have a qualifying interest under the Order.

Compensation when no land is taken

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- Reduction in Value: Use of Works
- The **Relevant Date** is the date its open to the public, if it’s a highway and the date it is first used for any other works.
- The **Valuation Date** is 12 months after the Relevant Date.
- Compensation is payable on the depreciation in value of land due to factors caused by the use of the public works between the Relevant Date and the Valuation Date.
- Interest is payable from the date the claim is made until payment.

Compensation when no land is taken

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- Reduction in Value: Use of Works
- The seven factors liable for depreciation under the Order are:

1) Noise;
2) Vibration;
3) Smell;
4) Fumes;
5) Smoke;
6) Artificial light; and
7) Discharge of a solid or liquid substance onto the land.

- Depreciation caused by any other factor will not be considered in determining compensation.

Fees

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- The acquiring authority will pay the reasonable fees of a surveyor incurred in negotiating claims.
- It is important to note, an authority is not under any obligation to pay fees until vesting has taken place and compensation (including fees) is payable.
- Requirements in relation to surveyor fees are set out in the *'RICS Professional Statement: Surveyors advising in respect of compulsory purchase and statutory compensation, 1st edition, April 2017'*

Fees

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- RICS Professional Statement
- The basis for fees an disbursement must be reasonable in relation to the complexity of the claim.
- It is reasonable to have regard to the following:

1. The work required in correct measure;
2. Required work may increase due to circumstances
3. Travelling costs

Fees

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- RICS Professional Statement
- The basis on which fees are charged, arrangements for payment and any changes must be agreed in writing with the client.
- Clients must be advised that they are liable for any fees not borne by the acquiring authority.
- Any time to be spent on matters not normally borne by the acquiring authority must be raised with the client before the time is incurred.

Fees

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- RICS Professional Statement
- Fees may be based on:

1. Time spent, multiplied by an hourly rate; or
2. A predetermined fixed fee where the scope is agreed.

- A claimant should expect the acquiring authority to reimburse the reasonable costs of the professional fee.
- However, the authority has no obligation to do so until vesting occurs and compensation is payable.
- The authority may choose to enter into an agreement to reimburse reasonable professional costs prior to the obligation. Any agreement should be in writing and clear as to whom the authority is agreeing to make payment.

RICS Professional Statement

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- The RICS Professional Statement also contains guidance and mandatory statements which RICS members must act in accordance with when advising in respect of compulsory purchase and statutory purchase.
- Available at: http://www.rics.org/uk/knowledge/professional-guidance/professional-statements/surveyors-advising-in-respect-of-compulsory-purchase-and-statutory-compensation-uk-1st-edition/

Kerr v NIHE

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- *Kerr v NIHE [2013] R/37/2010*
- Mr Kerr purchased a property in Moltke Street, Belfast in February 2007 for £150,500.
- As part of the regeneration of the Village area, the property was subject to a vesting order in April 2010.
- The outstanding mortgage debt as of April 2012 was £145,665.61.
- Compensation in the amount of £91,000 was offered for the value of the house, in line with the open market value

Kerr v NIHE

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- In addition, a home loss payment of £9,000 and a disturbance payment of £800 was included in the compensation.
- Total compensation was around £100,900.
- Resulting in a shortfall of around £45,000. Which Mr Kerr was liable for under his mortgage.
- Mr Kerr brought a claim to the Lands Tribunal for compensation in an amount to clear the negative equity.

Kerr v NIHE

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- The Lands Tribunal was asked to consider two points:

1) Can the negative equity be recovered as compensation under a disturbance payment?

2) Are the consequences of the negative equity burden placed on Mr Kerr by the vesting order contrary to Article 8 and/or Article 1 of the First Protocol of the European Convention on Human Rights?

Kerr v NIHE

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- Mr Kerr was not successful in his claim.
- The Lands Tribunal ruled that negative equity is a situation directly based on the value of land and the loss experienced by Mr Kerr resulted from the collapse of the property market which had occurred before, and independently of, the vesting order.
- The legislative framework was deemed to afford a realistic balance between the public need for community regeneration and the individual needs of those who would be adversely affected.

Kerr v NIHE

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- Out of the 583 properties affected by the vesting order, 60 properties were affected by residual debt.
- Mr Kerr was awarded costs as this was considered to be a important test case.
- The Lands Tribunal recommended that policy concerning compulsory purchasing land in negative equity should be reviewed.
- There has been no specific review providing for negative equity.

Recent Legislation

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- Most recent legislation concerning compulsory purchase: Land Acquisition and Compensation (Amendment) Act (Northern Ireland) 2016
- Effective from 12 May 2016
- This introduced the basic loss and occupiers loss payments discussed previously.
- Removed the farm loss payment compensation. This was rarely claimed and effectively replaced by the improved basic loss and occupiers loss payments.

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Compulsory Purchase Orders

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