Landmark CHAMBERS

Blight Notices and Material Detriment

Christopher Jacobs

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Housing and Planning Act 2016.
– New process for serving counter- notices requiring the purchase of land not in the notice to treat.

- Schedule 17 of the Housing and Planning Act 2016 amends the Compulsory Purchase Act 1965 through the insertion of a new Schedule 2A to that Act, entitled: ‘Counter-Notice requiring purchase of land not in notice to treat.’ The amendments came into force on 3 February 2017.

- Explanatory Statement to Housing and Planning Bill set out reasons for changes.

- Different procedures previously applied to general vesting declaration cases and cases where a notice to treat had been served.

- Where a general vesting declaration has been executed, the procedure for serving a counter-notice is set out in Schedule 1 to the Compulsory Purchase (Vesting Declarations) Act 1981. A reference to the Upper Tribunal will prevent entry onto land being taken until the issue of material detriment is resolved.

- However, prior to the changes in the 2016 Act, where a notice to treat had been served, divided land was covered by section 8 of the Compulsory Purchase Act 1965. Yet there was no statutory procedure for serving a counter-notice. The process was established in case law. Eg. Glasshouse Properties Ltd v Secretary of State for Transport (1993) 66 P&CR 285.

- Sched 2A Part 1 – where acquiring authority has not taken possession.
- The owner of land may serve a counter-notice requiring an acquiring authority to purchase the owner's interest in the whole of the land within 28 days from the date of service of the notice to treat or, if it would end earlier, the period specified in any repeat notice of entry.

- The effect of service of a counter notice is that any notice of entry previously served will cease to have effect, and the acquiring authority is prohibited from serving any notice of entry or further notice unless specified circumstances set out within paragraphs 11 and 12 of the schedule apply (i.e if the acquiring authority accepts the counter notice or serves notice of a decision to refer the counter-notice to the Upper Tribunal).

- On receiving a counter- notice the acquiring authority must decide to :

(a) withdraw the notice to treat; (b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

- The acquiring authority must serve notice of its decision on the owner of the property 'within the period of 3 months beginning with the day on which the counter-notice is served' – 'decision period'.
- Any reference of the counter-notice to the Upper Tribunal to be made within this 3 month decision period.
- If the acquiring authority does not serve notice of a decision within the decision period the matter is to proceed on the basis that the authority is treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

- Part 2 of the new schedule 2A relates to Counter notice procedure where the authority has taken possession.
- In this scenario, a counter-notice must be served within the period of 28 days beginning with the day on which—

(a) the owner first had knowledge that the acquiring authority had entered on and taken possession of the land, or (b) if later, the owner receives any notice to treat.

Similarly, the acquiring authority must serve a decision within 3 months or will be treated as though it had served notice of a decision to accept the counter notice at the end of that period.

- Where the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order will have effect as if it included the owner's interest in the additional land. Any notice to treat is also to have this effect.

- Part 3 of the new schedule 2A sets out the role of the Upper Tribunal.
- Paragraph 26 states:

(1) The Upper Tribunal must determine whether the severance of the land proposed to be acquired would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

(2) In making its determination, the Upper Tribunal must take into account—

(a) the effect of the severance,

(b) the proposed use of the land proposed to be acquired, and

(c) if that land is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

- Paragraph 27 requires the Upper Tribunal to determine how much of the additional land the acquiring authority ought to be required to take.

- The remaining provisions of the new schedule 2A give effect to determinations of the Upper Tribunal and make provision for the acquiring authority being able to withdraw the notice to treat in respect of the whole of the land at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal made its determination, provided that the person on whom the notice was served is compensated for any loss or expense caused by the giving and withdrawal of the notice. Any disputes as to the compensation is to be determined by the Upper Tribunal.

The Town and Country Planning (Blight Provisions)(England) Order 2017. (SI 2017 No 472)

- This Order came into force on 21 April 2017.

- Owner-occupiers of business premises are able to serve blight notices provided the annual rateable value of their premises does not exceed a prescribed limit (section 149 TCPA 1990).

- The order raises that limit from £34,800 to £36,000 in England outside Greater London and sets a prescribed amount of £44,200 for Greater London. These changes reflect the rating revaluation for 2017.

Tunnels

- Schedule 17(1) of the Housing and Planning Act added section 2A to the Acquisition of Land Act 1981, whereby a compulsory purchase order can exclude land that is 9 metres or more below the surface. This provision came into force on 3 February 2017.

Harding and Clements v Secretary of State for Transport [2017] UKUT 0135 (LC)

- The President and Mr PD McCrea FRICS handed down judgment on 31 March 2017 on a preliminary issue relating to blight notices. The question was whether two properties separated by a lane should be treated as a single hereditament within the meaning of the Town and Country Planning Act 1990 Pt Vi Ch II for the purpose of issuing a blight notice.

- The Claimants had purchased 2 plots of land to the south west and north east of Yarlet Lane, Marston, Staffordshire. The first plot comprised a barn, later converted to a dwelling house, a tack room, stables, feed store and hay barn and half an acre of land. They needed additional grazing land for their 3 competition horses and so bought the second plot, comprising 5 acres, which was used for hay, winter grazing and training the horses for carriage driving and dressage. The Claimants subsequently constructed a culvert between plots 1 and 2, containing a water pipe to supply a water trough on plot 2.
- Upon HS2 plans being published it became apparent that the claimants would effectively lose plot 2 as the high speed rail link would run through it.

- On 9 March 2016, the claimants served on the respondent a single blight notice under section 150(1) TCPA 1990 on the basis of blight under sched. 13 para 6(b). The notice treated both plots as forming one hereditament and requested the respondent purchase the whole of their ownership.

- The claimants argued that, notwithstanding the plots being divided by the lane, the plots, taken together, comprised a self- sufficient equestrian unit.

- The Secretary of State served 2 counter-notices, objecting to the validity of the blight notice on the sole ground that it did not relate to a single hereditament. The Respondent maintained that plot 2 had no unique or peculiar features that would preclude its separate occupation or letting independently from plot 1.

- On 3 June 2016, the claimants issued a notice of reference in the Tribunal to resolve the dispute.

- Finding for the claimants, the Tribunal held that Plots 1 and 2 comprised a single hereditament for the purpose of the statutory code as the use of plots 1 and 2 was inextricably linked and neither plot, on its own, could sustain the claimants' use of the land for equestrian purposes.
- The test for identifying a hereditament for rating purpose are set out in Woolway (Valuation Officer) v Mazars LLP [2015] UKSC 53, where Lord Sumption JSC laid down three principles.
- The primary test is geographical and based on visual or cartographic unity.
- Secondly, where two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of one is necessary to the effectual enjoyment of the other. Commonly, this test concerns asking whether the two sections could reasonably be let separately.
- Thirdly, the question of whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects.
- Furthermore, the test requires the application of the principle of '*rebus sic standibus*' ' as things stand'. Effectively the property is to be considered according to its actual status and use on the relevant date.

- The Tribunal held that the geographic test was not made out and that there is no visual or cartographic unity between plots 1 and 2, and whilst accepting that there is a degree of contiguity between the plots beneath the surface of the lane, the geographical test was not made out, not least because it is necessary to cross a public highway to gain access between the two plots. The ducts that had been laid out in the culverts did not affect this position.

- However, the Tribunal did accept that the functional test was made out. It was accepted that without plot 2 the claimants would only be able to keep 2 rather than 3 horses on plot 1. The Tribunal held that there is a necessary interdependence between the two plots for the purpose of keeping horses and that plot 1 could not be let separately for the relevant range of uses to which it is put: stabling for 3 horses, a three bay hay barn and a carriage store.

- It was emphasised at the conclusion of the judgment that decisions on whether two separate pieces of land are to be treated as one hereditament by the application of the functional test are highly fact sensitive.