

**CPOs and Compensation:
The no-scheme principle and s. 6A
of the LCA 1961**

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Neighbourhood Planning Act 2017

- Government response to consultation Sept 2016
- Bill introduced 7 Sept 2016
- Parliamentary “ping-pong” completed 25/26 April 2017
- Royal Assent 27 April 2017
- Provisions come into force on a day to be appointed – s. 46(1).
- Apply to England and Wales
- Compulsory purchase reforms in Part 2 – s. 32 for new no-scheme provisions (replacing LCA 1961 provisions)
- In force from 22 .9.17 - the Neighbourhood Planning Act 2017 (Commencement No. 2) Regulations 2017 SI No 936

Chapter 2 of the 2017 Act

- Follows on from changes to planning assumptions in ss. 14-17 of the Land Compensation Act 1961 made by the Localism Act 2011
- ss. 6-9 and 15 and Schedule 1 of 1961 Act are replaced by the new “no scheme world” rules in new ss. 6A-6E (s. 32 of the 2017 Act), s. 6A setting out the new no-scheme principle and the following provisions dealing with the definition of “scheme” and other issues
- However, there is no express provision to “clear the decks” such as advised by Law Commission Report in 2003
 - “All previous rules, statutory or judge-made, relating to disregard of “the scheme” will cease to have effect.”

Are the decks cleared? - 1

- Are the decks cleared by new s. 5(2A))?
 - “The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A
- Applying the approach in ***Waters***, the new rules appear more comprehensive than the old, now repealed rules
- The Explanatory Memorandum however is ambiguous –
 - “107 The principles and assumptions concerning the no-scheme world and the extent of the scheme to be disregarded are **mainly to be found in** sections 6 to 9 of the Land Compensation Act 1961 (‘1961 Act’) and **around 100 years of case law** on these provisions and their predecessors.
 - 108 This section **clarifies the principles and assumptions** for the “no-scheme world”, taking into account the case law and judicial comment.

Are the decks cleared? - 2



- The Govt Response of 2016 appears to point to replacement –
 - “8. The ‘no scheme world’ principle has, however, been interpreted in a number of complex and often contradictory ways. This lack of clarity may make it very difficult to establish the basis for calculating market value in some cases and causes significant delays and uncertainty in the determination of compensation.”
 - 9. The consultation sought views on proposals to establish the principle of the ‘no scheme world’ fairly and effectively in the valuation process by codifying it in statute and introducing a:
 - • clearer definition of the project or scheme that should be disregarded in assessing value...”
 - 21. The government will therefore, take forward the proposal to codify the ‘no scheme world’ valuation principle in legislation.

No-scheme principle

- Long history of “no scheme world” hypothesis both statutory and judge made, e.g. -
 - ***“The Indian Case” - Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam*** [1939] AC 302
 - ***Pointe Gourde Quarrying & Transport Co v. Sub-Intendent of Crown Lands*** [1947] AC 565
 - ***Waters v. Welsh Development Agency*** [2004] 1 WLR 1304
 - ***Transport for London v Spirerose Ltd*** [2009] 1 WLR 1797
 - ***JS Bloor (Wilmslow) Ltd v. Homes & Communities Agency*** [2017] UKSC 12, [2017] R.V.R. 110

Cancellation assumption

- Limits the effect of disregarding the planning history prior to the scheme draws a distinction between planning history generally and that (e.g. policy) which can be regarded as part of the underlying scheme –
 - ***Fletcher Estates v. Secretary of State*** [2000] 2 AC 307
 - ***Boland v Bridgend CBC*** [2017] R.V.R. 243
- Now part of the new rules – Rule 1, which in effect emphasises the need to apply the planning assumptions in s. 14 that are referred to specifically by s. 6A(10)

No-scheme principle



- **Towards A Compulsory Purchase Code: (1) Compensation**
(Law Com No. 286, December 2003)
 - “the most difficult subject we have had to address in this project: the complex and intractable problems arising from the so called Pointe Gourde (or “no-scheme”) rule.”
 - “D.58 ... section 6 (with the First Schedule) has been subject to particular criticism: the convoluted wording was difficult to interpret; the section applied to “other land”, but made no equivalent provision for the subject land; and the statute failed to indicate whether or not the new rules were intended as a complete no-scheme code, or simply as a supplement to the judicial rule.”

No-scheme principle

- “The no-scheme principle is the principle that—
 - (a) any increase in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded, and
 - (b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded”

(s. 6A(2))
- Note the difference between “value of land” and “the land”
- Applies to the effect of the scheme or *the prospect of* that scheme (see ***Director of Buildings & Lands v Shun Fung Ironworks Ltd*** [1995] 2 A.C. 111)
- This is then applied subject to 5 specific rules in s. 6A(3)-8)

No-scheme principle

- **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 (including acquisition of any land, and any development or works) 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 any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.

No-scheme principle

- **Rule 4:** it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.
- **Rule 5:** if there was a reduction in the value of land as a result of—
 - (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
 - (b) the fact that the land was blighted land as a result of the scheme,that reduction is to be disregarded.