

Overriding Easements

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Landmark Chambers

The old days

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- Section 237 of the 1990 Act
 - Part 1, Schedule 3 of the HRA 2008
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Why have the power?



R v City of London Corp. ex p. Mystery of the Barbers of London (1997)
73 P. & C.R. 59: Dyson J:

The statutory objective which underlies section 237 of the 1990 Act is that, provided that work is done in accordance with planning permission, and subject to payment of compensation, a local authority should be permitted to develop its land in the manner in which it, acting bona fide, considers will best serve the public interest. To that end, it is recognised that a local authority should be permitted to interfere with third party rights. A balance has to be struck between giving local authorities freedom to develop land held for planning purposes, and the need to protect the interests of third parties whose rights are interfered with by local authority development. Section 237(1) is the result of the balancing exercise ... [cont.]

Successors in title



- **Dyson J:** I do not have to consider in this case whether, as a matter of construction, there are any, and if so what, limits to the application of section 237(1) to those who derive title under the acquiring or appropriating local authority. My provisional view is that, in order to attract the immunity conferred by the subsection, the work done (whether by the local authority or the person deriving title under it) must be related in some way to the planning purposes for which the land was acquired. That would explain why, even in cases where the work is done by a person deriving title under a local authority, Parliament has decided that the local authority should have a contingent liability to pay compensation.
- See also *Midtown Ltd v City of London* [2005] EWHC 33 (Ch).

The new provisions



- Sections 203 – 205 of the Housing & Planning Act 2016.
- As amended by section 37 of the NPA 2017
- Section 37 came into force on 19th July 2017
- Clear that Parliament did not intend a radical overhaul of previous system.



HPA section 203(1)



(1) A person may carry out **building or maintenance work** to which this subsection applies even if it involves—

- (a) interfering with a relevant right or interest, or
- (b) breaching a restriction as to the user of land arising by virtue of a contract.



HPA s.203(2)

- (2) Subsection (1) applies to **building or maintenance work** where—
- (a) there is planning consent for the building or maintenance work,
 - (b) the work is carried out on land that has at any time on or after the relevant day —
 - (i) become vested in or acquired by a specified authority or a specified company acting on behalf of a specified authority, or
 - (ii) been appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990,
 - (c) the authority could acquire the land compulsorily for the purposes of the building or maintenance work, and
 - (d) the building or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b).
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HPA s.203(4)

A person may **use** land in a case to which this subsection applies even if the use involves—

- (a) interfering with a relevant right or interest, or
 - (b) breaching a restriction as to the user of land arising by virtue of a contract.
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s.203(5)



Subsection (4) applies to the **use of land** in a case where—

- (a) there is planning consent for that use of the land,
- (b) the land has at any time on or after the relevant day —
 - (i) become vested in or acquired by a specified authority or a specified company acting on behalf of a specified authority, or
 - (ii) been appropriated by a local authority for planning purposes as defined by section 246(1) of the Town and Country Planning Act 1990,
- (c) the authority could acquire the land compulsorily for the purposes of erecting or constructing any building, or carrying out any works, for that use, and
- (d) the use is for purposes related to the purposes for which the land was vested, acquired or appropriated as mentioned in paragraph (b).

Other qualifying land



- Analogous provisions relate to “other qualifying land” – see s.203(3) and (6)
- Other qualifying land is defined in s.205:

“other qualifying land” means land in England and Wales that has at any time before 13 July 2016 been— ...

(f) vested in or acquired by the Homes and Communities Agency, apart from land the freehold interest in which was disposed of by the Agency before 12 April 2015;

Other qualifying land



Subsection (1) also applies to building or maintenance work where—

- (a) there is planning consent for the building or maintenance work,
- (b) the work is carried out on other qualifying land,
- (c) the qualifying authority in relation to the land could acquire the land compulsorily for the purposes of the building or maintenance work, and
- (d) the building or maintenance work is for purposes related to the purposes for which the land was vested in, or acquired or appropriated by, the qualifying authority in relation to the land.

Key definitions



- “*building or maintenance work*” means the erection, construction, carrying out or maintenance of any building or work;
- *relevant right or interest*” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support);
- *specified authority*” means—(a) a Minister of the Crown or the Welsh Ministers or a government department,
- (b) a local authority as defined by section 7 of the Acquisition of Land Act 1981,
- (c) a body established by or under an Act,
- (d) a body established by or under an Act or Measure of the National Assembly for Wales, or
- (e) a statutory undertaker;



- Specified company” means:
 - a) a company or body through which the Greater London Authority exercises functions in relation to housing or regeneration, or
 - b) a company or body through which Transport for London exercises any of its functions.
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- “*relevant day*” means—(a) in relation to a specified company which is a company or body through which Transport for London exercises any of its functions, 19th July 2017, and (b) in all other cases, 13 July 2016
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In simple terms ...



- The land has become vested in or has been acquired by a specified authority on or the relevant day or the land is 'other qualifying land';
- There is planning consent for the building or maintenance work or use;
- The authority could acquire the land compulsorily for the purposes of building or maintenance work or for the purposes of erecting or constructing a building or carrying out any works, or for the use.
- The building or maintenance works or use is for purposes related to the purposes for which the land was vested in or acquired by the authority.

Protected Rights: s.203(9)



- Nothing in this section authorises an interference with—
 - (a) a right of way on, under or over land that is a protected right, or
 - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right.

Protected Rights



- “*protected right*” means
 - (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
 - (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);

The National Trust: s.203(10)



- (10) Nothing in this section authorises—
- (a) an interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, or
 - (b) a breach of a restriction as to the user of land which does not belong to the National Trust—
 - (i) arising by virtue of a contract to which the National Trust is a party, or
 - (ii) benefiting land which does belong to the National Trust.

Compensation: s.204



- (1) A person is liable to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by section 203.
- (2) The compensation is to be calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965.
- (3) Where a person other than a specified or qualifying authority is liable to pay compensation under this section but has not paid—
 - (a) the liability is enforceable against the authority, but
 - (b) the authority may recover from that person any amount it pays out.
- (4) The authority against which a liability is enforceable by virtue of subsection (3)(a) is—
 - (a) where the land to which the compensation relates was vested in or acquired by a company through which the Greater London Authority exercises or has exercised functions in relation to housing or regeneration, the Greater London Authority,
 - (b) where the land was vested in or acquired by a company through which Transport for London exercises or has exercised any of its functions, Transport for London, or
 - (c) in all other cases, the specified or qualifying authority in which the land was vested, or by which the land was acquired or appropriated.
- (5) Any dispute about compensation payable under this section may be referred to and determined by the Upper Tribunal.