

What is “the scheme”?

Section 6D Land Compensation Act 1961

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The “no-scheme” principle

- Sections 6A-E LCA 1961 introduced by s 32 Neighbourhood Planning Act 2017
- Statutory definition of “no-scheme” principle: see David Elvin QC’s talk
- But what is the scheme?

Waters v Welsh Development Agency

[2004] 1 W.L.R. 1304



“[43] Notoriously the practical difficulty with the Pointe Gourde principle lies in identifying the area of the “scheme” in question. This difficulty does not arise when the enhanced value arises from the authority's proposed user of the subject land. Then, by definition, what is in issue is the proposed use of the subject land. But when regard is had to the authority's use or proposed use of other land the application of the principle is not self-defining. A major development project of a general character, covering a wide geographical area, may proceed in several phases, each phase taking years to implement, and the detailed content and geographical extent of each phase being subject to change and finalised only as the phase nears the time when the work will be carried out. Is that one scheme or several?”

Lord Nicholls

Waters

at [55] – [63]



“The co-existence of the section 6 code and the Pointe Gourde principle means that the problems associated with identifying the ambit of the “scheme” for the purposes of the Pointe Gourde principle remain live problems...

The wider the scheme, the greater the potential for inequality between those outside the area of acquisition, whose land values rise by virtue of the scheme, and landowners whose properties are acquired at a value which disregards the scheme. Conversely, the narrower the scheme, the greater the potential for an authority being called upon to pay compensation inflated by its own investment in improved infrastructure or other regeneration activities. Holding the balance between these conflicting interests is pre-eminently a subject for decision by Parliament.”

Waters

continued



- A scheme essentially consists of a project to carry out certain works for a particular purpose or purposes
- Said to be a question of fact but “selecting from these background facts those of key importance for determining the ambit of the scheme is not a process of fact-finding as ordinarily understood”
- A judgmental exercise is required e.g. in deciding whether a phased development constitutes a single scheme or more than one scheme
- The purpose of the principle is to forward Parliament's objective of providing dispossessed owners with a fair financial equivalent for their land. They are to receive fair compensation but not more than fair compensation. This is the overriding guiding principle when deciding the extent of a scheme

Waters

“useful pointers” (at [63])



- (1) The Pointe Gourde principle should not be pressed too far and should be applied in a manner which achieves a fair and reasonable result.
- (2) Result not fair and reasonable if it requires a valuation exercise which is unreal or virtually impossible.
- (3) Caution required where valuation shows gross disparity between the amount of compensation payable and the market values of comparable adjoining properties which are not being acquired.
- (4) Apply by analogy with the provisions of the statutory code.
- (5) Normally the scope of the intended works and their purpose will appear from the formal resolutions or documents of the acquiring authority. But this formulation should not be regarded as conclusive.
- (6) When in doubt a scheme should be identified in narrower rather than broader terms

Section 6D(1): statutory definition



“the scheme of development underlying the acquisition”

but

subject to subsections (2) to (5)

Section 6D(2): development areas & new towns



(2): where acquisition is in connection with urban development area (as defined under LGPLA 1980); new town (NTA 1981); or Mayoral development area (LA 2011), “the scheme is the development of any land for the purposes for which the area is or was designated”

(3) Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project (subject to section 6E)

Section 6D(3)-(4): relevant transport project



“(3) Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project (subject to section 6E)”

ss (4) defines a “relevant transport project” as a transport project carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers (regardless of whether it is carried out before, after or at the same time as the regeneration or redevelopment)

Section 6E: relevant transport projects

- Definition in 6D(3) only applies where regen/redevelopment part of the justification for the transport project
- Limited application of 6D(3):
 - Transport project must open within 5 yrs of section taking effect
 - CPO must be made after section takes effect
 - Acquisition must be authorised within 5 yrs after project opening
 - Land must be in vicinity of relevant transport project
- Note also approach to compensation in s 6E(3)-(6)

Section 6D(5): role of Tribunal

- Underlying scheme to be identified as a matter of fact
- Assumption that it is the scheme provided for in the CPO unless shown to be larger
- Generally the acquiring authority may only lead evidence of a larger scheme if that scheme is identified in the CPO/documents made available with it

So what has changed?

- Two defined categories of scheme – s 6D(2) and 6D(3)
- Otherwise the Waters principles likely to remain relevant, subject to the presumption and evidential rules in 6D(5)