

VESTING ORDER ISSUES

Tim Mould QC

The nature of the power



- Compulsory purchase - expropriation of land or rights over land
 - Interference with a fundamental right at common law
 - Engages article 1 protocol 1 of the European Convention of Human Rights
 - Acquiring authority must show that acquisition of the land or right is required for the infrastructure scheme.
 - Acquiring authority must show that there is a compelling case for acquisition in the public interest.
 - Fair balance – compensation payable on the basis of the principle of equivalence
 - *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111
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Some vesting order statutes



- Local Government Act (Northern Ireland) Act 1972 sections 96/97
- Planning (Northern Ireland) Order 1991 article 87
- Roads (Northern Ireland) Order 1993 articles 110-115
- Housing (Northern Ireland) Order 1981 articles 31-31B and 87

Preparing and justifying a vesting order



- Procedure for acquisition – schedule 6 to the LGA(NI) 1972
- Purpose - what is the scheme?
- Need – why is the scheme necessary?
- Delivery – land assembly, incumbrances, planning permission, finance, viability and investment issues
- Vesting order – why is the land required for the scheme?
- Alternatives – to the scheme, to the acquisition or use of the land for the scheme?
- Negotiation – why has the land not been secured by agreement?
- Compensation – what is the likely cost of acquisition?
- Settlement – what are the terms upon which objections might be resolved?

Compensation Code



- Land compensation statutes, case law and practice
 - Land Compensation (Northern Ireland) Order 1982
 - Land Acquisition and Compensation (Northern Ireland) Order 1973
 - Planning Blight (Compensation) (Northern Ireland) Order 1981
 - Lands Tribunal and Compensation Act (Northern Ireland) 1964
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Land compensation – the basics



- Parts III & IV of the Land Compensation (NI) Order 1982
 - Article 6 – rules for assessing compensation
 - Rule 2 – the market value rule
 - Rule 6 – disturbance
 - Rule 5 – equivalent reinstatement where no market for the land
 - Article 6 – scheme disregards – Pointe Gourde
 - Article 8 – severance and injurious affection
 - Articles 12/17 – planning assumptions and certificates
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Land compensation – the basics



- Land Compensation (NI) Order 1982
- Article 18 – compensation for interference with private rights
- Article 5 – particulars of claim and costs
- Articles 3 and 4 – dispute resolution by Lands Tribunal
- Article 19 – right to advance payment of compensation
- Part II claims – depreciation resulting from use of public works
- Blight notices – advance purchase and qualifying interests
- Compensation for disturbance – sections 37/38 of LAC(NI)Order 1973
- Statutory loss payments – Part IV of LAC(NI)Order 1973

Legal challenge



- Vesting orders – paragraph 5, schedule 6 to the LGA(NI) 1972
- Conventional public law grounds of challenge
- Compensation decisions of the Lands Tribunal
- Section 8 of the LTCA(NI) 1964
- Appeal on a point of law by way of case stated to the Court of Appeal

**Vesting order issues
in infrastructure cases
Part II**

Jenny Wigley

Focus on Compensation



Compensation for Compulsory Acquisition Legislative Framework



- Lands Tribunal and Compensation Act (Northern Ireland) 1964
- Land Acquisition and Compensation (Northern Ireland) Order 1973;
- Land Compensation (Northern Ireland) Order 1982;
- Planning Blight (Compensation) (Northern Ireland) Order 1981.

Focus on value of land taken The Land Compensation (NI) Order 1982



- *The amount which the land if sold in the open market by a willing seller might be expected to realise*

Subject to –

- Rules 3 to 6 in Article 6(1)
- Disregards of effects on value attributable to *inter alia* the scheme – Article 6(2)(b)
- Planning assumptions: Articles 12 -17

Pointe Gourde



- The “no-scheme” rule
 - Compensation for compulsory purchase is to be assessed disregarding any increase or decrease in value solely attributable to the underlying scheme of the acquiring authority
 - Established and developed by case law
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HCA v. Bloor



- Homes and Communities Agency v JS Bloor (Wilmslow) Ltd [2017] UKSC 12
 - Interaction between statutory planning assumptions (similar to Articles 12-17) and statutory disregards (Art 6(2)(b)) and no-scheme rule
 - Decided under statutory planning assumptions as they were in 1961 Act prior to changes made by Localism Act 2011 and prior to changes made by Neighbourhood Planning Act 2017
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Bloor – the facts (1)



- Two parcels of grazing land subject to CPO for business park
 - Lands had long been identified as having development potential
 - At valuation date, lands fell within strategic regional site allocated for scheme in statutory development plan and for variety of uses
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Bloor – the facts (2)



- Bloor's claim based upon potential residential development value in no-scheme world
 - HCA argued that application of statutory planning assumptions and no-scheme rule restricted valuation basis to existing use only
 - Upper Tribunal (Lands Chamber) found 50/50 chance of planning permission for housing in no-scheme world - £746,000
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Bloor – the Tribunal Approach (1)



- Statutory planning assumptions (s.16 / Article 14)
- Assume that planning permission granted for a specified range of purposes on cancellation assumption
- Cancellation assumption – that scheme of acquisition *in respect of the reference land* was cancelled at the date of the notice to treat
- Here, Bloor’s land would have enjoyed reasonable prospect of residential development on cancellation assumption
- BUT resulting increase in value must be disregarded as attributable to the CPO scheme – since *on statutory assumption* release of Bloor’s land for housing unlikely in absence of scheme proposal

Bloor – Tribunal Approach (2)



- Statutory scheme disregards (Art 6(2)(b)) and no-scheme rule
- If CPO scheme (KBP scheme) failed, planning policies applicable to reference land at valuation date would remain in existence
- Prospective purchaser of reference land would judge those policies as giving “some extra hope value” of a planning permission for residential development
- Applying no-scheme rule, that hope value provided proper basis for valuation of the reference land in accordance with rule 2 (equivalent in NI, Art 6(1)(2) of 1982 Order)
- See Tribunal’s decision at [91]-[98]

Bloor – the issues on appeal



- Was the Tribunal wrong to ascribe hope value beyond the statutory planning assumptions?
- Did the no-scheme rule permit the Tribunal to base its valuation on the *planning policies* in the statutory development plan that sought to promote a business park (i.e. the scheme) and residential development on part of that site?

Bloor – in the Supreme Court



- Tribunal clearly entitled to regard the underlying planning policies as potentially relevant to prospect of development of reference land in no-scheme world [36]
- Statutory planning assumptions work in favour of claimant not against him and permit him to argue for prospective value under other provisions of compensation law [37]
- Right to claim for potential development value is long settled [38]
- Application of no scheme rule may affect assumed planning status of reference land [39]-[40]
- In particular, may produce more favourable basis for valuation [40] - the *Jelson* cases

Bloor – Implications



- The Tribunal’s “exemplary” application of those principles to the “complex facts” of the case is a valuable, practical guide in NI as much as in England
- Underlying, unspoken theme is the principle of equivalence
- Purpose of the statutory code is to enable the claimant to receive a price for his land that reflects its true potential in the market in the no-scheme world
- Primarily a fact based exercise in valuation judgement

Landmark
CHAMBERS

Thank you

Jenny Wigley