

Vesting orders and compensation



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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

Some vesting order statutes

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

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 – 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

Land compensation – the basics

- Parts III & IV of the Land Compensation (NI) Order 1982
- Article 6(1) – 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(2) – scheme disregards
- Article 8 – severance and injurious affection
- Articles 12/17 – planning assumptions and certificates

Case law – four principles

- The principle of equivalence
- The presumption of compensation for expropriation
- Value to owner basis of assessment
- The no-scheme principle

- Horn v Sunderland Corporation [1941] CA
- Harvey v Crawley Development Corporation [1957] CA
- Director of Buildings and Works v Shun Fung Ironworks [1995] PC
- Pointe Gourde v Sub-Intendant of Crown Lands [1947] PC

The principle of equivalence

- The sum of money that will put the owner (as the injured party) in the same position as he would have been in if he had not sustained the wrong for which he is being compensated – value to owner principle
- The promoter is bound to compensate the owner for all the loss sustained by reason of the expulsion.
- The principle of equivalence is at the root of statutory compensation, which lays down that the owner shall be paid neither less nor more than his loss.
- Fair and full compensation.

Compensation rules – article 6(1)

- Rule 1 – no allowance for compulsory nature of purchase.
- **Rule 2 – the open market value rule (the amount the land might realize if sold in the open market by a willing seller)**
- Rule 3 – disregard special suitability or adaptability for purpose that could be applied only in pursuance of statutory powers (or for which no market other than for the requirements of an authority with such powers).
- Rule 4 – disregard value increased by use of land that is contrary to law or public health.
- **Rule 5 – reasonable costs of reinstatement where the land is devoted to a purpose of such a nature for which there is no general demand or market for land (provided that there is a bona fide intention to relocate).**
- **Rule 6 – The market value rule shall not affect assessment of compensation for disturbance or any other matter not directly based on value of the land.**

The no-scheme principle – article 6(2)

- Any increase or diminution in value of the land taken that is attributable solely to the promoter's scheme is to be disregarded – the Point Gourde principle.
- Because Parliament did not intend that CPO for the statutory scheme should increase or diminish the value of the compensation payable for the land taken.
- Modern terminology - the scheme cancellation assumption.

The basic elements of a claim

- Land taken – open market value (rule 2)/ special cases (rule 5).
- Land retained – severance and injurious affection diminishing value of that land (article 8 of the 1982 Order)
- Disturbance – rule 6 – Horn v Sunderland Corporation/ Shun Fung Ironworks (preserves value to owner and equivalence).
- Disturbance – need to show causal connection, not too remote, consistent with duty to mitigate - Harvey v Crawley Development Corporation [1957] CA. Fact specific and wide ranging.
- Legal and conveyancing costs and other professional fees.
- Statutory loss payments – Part 4 of the 1973 Act.

Statutory planning assumptions

- Articles 12 to 14 of the Land Compensation Order 1982
- Actual and potential value – statutory planning assumptions
- Articles 15 to 17 – Certificates of Alternative Development Value
- So that the claimant is able to bring into account the development potential of his land in the assessment of its open market value in the no-scheme world.
- A further aspect of the principle of equivalence.

Compensation for execution of public works

- Land Compensation (NI) Order 1982 article 18
- In place of an action for damages at common law
- Aligns with the promoter's immunity from private action
- Only where the lawful execution of works interferes with legal right and results in diminution in value of land. No claim for environment effects per se: common law rule in Andreae v Selfridge [1938] applied by HL in Wildtree Hotels case [2001]
- Interference with property rights (easements, rights of way) – see Wildtree Hotels v Harrow LBC [2001] HL, Clift v Welsh Office [2001] CA.
- Negligent performance of public works remains actionable at law.

Compensation for use of public works

- Part 2 of the Land Acquisition and Compensation (Northern Ireland) Order 1973
- Qualifying owner occupiers may claim for diminution in value of their property resulting from physical factors (noise, dust, fumes etc) due to operation of scheme.
- Residential owner-occupiers, agricultural units, owner- occupiers of small business premises.
- Measure of compensation is difference in value of the property with the scheme switched off and switched on in the market at the first anniversary of coming into use.

Procedure for claims

- Land Compensation (NI) Order 1982
- Article 5 – particulars of claim and costs
- Articles 3 and 4 – dispute resolution by Lands Tribunal
- Article 19 – right to advance payment of compensation

Advance purchase of land – blight notices

- Blighted land – article 3 of the 1981 Order
- Qualifying interests – owner occupiers of dwellings, small business premises and agricultural holdings
- Notice requiring purchase – reasonable efforts to sell without success
- Objections - counternotices – land not needed/needed only in part
- Effect of valid blight notice – purchase on CPO terms
- Partially affected farms – unaffected area not reasonably capable of being farmed – article 9 of the 1981 Order
- Objections decided by Lands Tribunal – objection upheld - risks

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