

**Welcome to Landmark Chambers’
‘Delivering Major Infrastructure: Part 1 – Land
acquisition – setting the strategy’ webinar**

The recording may be accessed [here](#).

Your speakers today are...



Neil Cameron QC (Chair)
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Ian Cunliffe
Director, Head of Infrastructure Development, Gateley Hamer)

Topic:
Land acquisition
strategy: a surveyor's
perspective



David Nicholls
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Topic:
Deciding on the
land and the rights
to be acquired



Matthew Henderson
Barrister, Landmark Chambers

Topic:
Preparing the land
acquisition strategy –
neighbouring land

Forward thinking.
Straight talking.

*Delivering Major Infrastructure: Land
assembly and acquisition
Part 1: Setting the Strategy*

Ian Cunliffe

Head of Infrastructure Development

Tuesday 21st July 2020



Gateley

HAMER

Topics covered

- Obligations on applicants seeking compulsory acquisition powers
- The importance of an agreed 'land strategy'
- Benefits of early engagement
- Securing voluntary agreements
- How to manage the land work stream
- Lessons learned and managing risks

Obligations on applicants

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire;
and
- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale

it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

(MHCLG Guidance on Compulsory purchase process and The Crichel Down Rules)

Obligations on applicants

The acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation. These include:

- the programming of any infrastructure accommodation works or remedial work which may be required; and
- any need for planning permission or other consent or licence.

(MHCLG Guidance on Compulsory purchase process and The Crichel Down Rules)

Obligations on applicants

Satisfying the tests for Compulsory Acquisition

- a.) the purpose of the land for which the land required is *development*
- b) there is a compelling case in the public interest for the land to be acquired compulsorily;
- c). there are no reasonable alternatives to compulsory acquisition (*including modifications to the scheme*) which would have a lesser impact;
- d). the acquisition is necessary and proportionate;
- e). the land to be acquired is no more than is reasonably required for the purposes of the development.

(S.122 of the PA and DCLG Planning Act Guidance related to procedures for the compulsory acquisition of land)

Obligations on applicants

The objective of engagement....

- 'Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.'

(DCLG Planning Act Guidance related to procedures for the compulsory acquisition of land)



Importance of an agreed land strategy



Benefits of early engagement

Bring the project into 'the real world'.....

- Moving the process from the desk to the ground;
- Genuine 'optioneering' to de-risk the scheme...(and satisfy cp tests)
- Opportunity to build a clear understanding of how affected businesses operate, and how impacts can be minimised or mitigated, and to ensure land and property related issues are taken in to account through scheme design development;
- Prepare for the Examination/Inquiry
 - Audit trail of engagement
 - Identify risks



Securing voluntary agreements - What form of agreement?

- ▶ What form of agreement?
 - ▶ Option Agreements
 - ▶ Land and Works Agreements
 - ▶ Statements of Common Ground

BEFORE APPLICATION IS MADE - GET HEADS OF TERMS OUT!

Demonstrates the acquiring authority/Applicant has sought to acquire by agreement and understands the key issues.



How to manage the Land Workstream - Case Management

- Government guidance on compulsory purchase states that applicants should appoint:

*'a specified **case manager** during the preparatory stage to whom those with concerns about the proposed **acquisition** can have easy and direct access.'*

(MHCLG Guidance on Compulsory purchase process and The Crichel Down Rules)

- The benefits of appointing a Case Manager are multiple, including:
 - Compliance with Government guidance;
 - Opportunity to build trust and positive relationships with affected parties through a single point of contact, thereby resulting in fewer and less challenging objections;
 - Reducing consenting and compensation risk by using a single point of contact to lead land workstream including landowner consultation, responding to objections and providing evidence at Inquiry/Examination.

How to manage the Land Workstream - Case Management

- It is essential that the Land Workstream is appropriately managed in accordance with Government and RICS guidance.
- The RICS Professional Statement (2017), '***Surveyors advising in respect of compulsory purchase and statutory compensation,***' sets out '*the standards of behaviour and competence expected of members when acting in respect of the compulsory purchase code and applies whether members are working for or on behalf of applicants, any body with statutory powers, or affected parties.*'
- 20 behaviours which must be satisfied
- Surveyors need to confirm in writing to clients (applicants and claimants) they can meet these standards

Lessons Learned and Managing risks

➤ Resource...

*'You **must not** accept instructions to provide advice in matters unless you have the:*

(a) requisite competence appropriate for the assignment and

(b) resources to complete the assignment within the time scale and to the standard required.

(RICS Professional Statement)

➤ Agents Fees for negotiation of agreements

- Claimants should be properly represented (in accordance with RICS Professional Statement);
- Fee agreements facilitate the negotiation of agreements and allow progress to be made BUT are subject to fixed scope; i.e. no funding of objections.

➤ Prepare for Delay.....

- Recognise the impact, have methods (and resources) to address it (i.e. discretionary acquisition schemes, understand obligations under Equalities Act 2010, flexibility in agreements etc.)

Deciding on the land and the rights to be acquired



David Nicholls

Deciding on the land and the rights to be acquired (1)

- Permanent or temporary acquisition
- Mitigation land
- Reaching agreement
- Special landowners
- Special categories of land

Approach to strategy

- Who?
- What?
- Where?
- When?
- How?
- Why?



Deciding on the land and the rights to be acquired (2)

- Acquiring authority
- Statutory powers
- Purpose
- Particular land
- Adverse third party rights

What land?

What is land?

- Sch 1, Interpretation Act 1978
- S.205(1)(ix), Law of Property Act 1925

Estates and interests

- Legal freehold
- Legal leasehold
- Legal interests in and rights over land
- Equitable interests in and rights over land

What sort of acquisition?

- Permanent acquisition?
- Temporary acquisition?
 - Is there power?
 - Removal of structures and subsequent reinstatement
 - Planning Act 2008
- Is some lesser right sufficient?
 - E.g. right of access

What impact?

Mitigation land

Power to acquire land:

- To mitigate adverse effect of public works
- Where enjoyment of land is seriously affected
- To mitigate adverse effects of highway

Reaching agreement (1)

How?

Voluntary acquisition:

- Open market purchase
- Negotiations with alternative of CP powers
- Start CP process first, then purchase

Reaching agreement (2)

Why?

CP should be last resort (see MHCLG guidance)

Benefits:

- Flexibility
- More time
- Greater certainty

But – need willing vendor

Who owns the land? (1)

Special considerations apply for land owned by certain categories of owners:

- Statutory undertakers, including:
 - Transport undertakings (but not private bus and taxi firms)
 - Docks, harbours, lighthouses
 - CAA and NATS
 - Universal postal providers
 - Utility providers
- Local authorities
- National Trust

Who owns the land? (2)

Section 16, Acquisition of Land Act 1981

- Representation to Minister
- Must be satisfied
 - Either that land can be acquired without serious detriment
 - Or that land can be replaced without serious detriment

Section 17

- Objection  special parliamentary procedure

How is the land used?

Land giving rise to special considerations:

- Commons, open space, allotments
- Listing buildings and conservations areas
- Ecclesiastical property
- Public highway

Open space etc. (1)

Section 19 Acquisition of Land Act 1981

CPO subject to special parliamentary procedure unless SoS is satisfied:

- Exchange land of at least the same size and advantage
- Land purchased to preserve or improve its management
- Land does not exceed 250 square yards or for widening or drainage of a highway

Exchange land

Factors:

- Relative size
- Proximity
- Prospects of improvement
- Character and features

Open space etc. (2)

Includes disused burial grounds

What about the bodies?



Preparing the land acquisition strategy – neighbouring land



Matthew Henderson

Topics

- 1) Section 7 of the Compulsory Purchase Act 1965 (“**CPA 1965**”) – severance and injurious affection where land taken.
- 2) Section 10 CPA 1965 – injurious affection where no land taken.
- 3) Part 1 of the Land Compensation Act 1973 (“**LCA 1973**”) - compensation for the use of public works.
- 4) Non-statutory blight schemes.

(1) Section 7 CPA 1965

- Right to compensation arises where:
 - land has been acquired compulsorily from the claimant;
 - the claimant as an interest in ‘other land’ which was ‘held with’ the land compulsorily acquired;
 - the value of the claimant’s ‘other land’ has been depreciated by either ‘severance’ or ‘injurious affection’ as a result of the compulsory purchase.

- Severance:
 - “separated from, in the sense that it can no longer be treated as part of, the subjects which, until, its purchase, he held with it” (see **Cowper**);
 - includes horizontal strata (e.g. tunnel)
 - also where acquiring authority is authorised to acquire a new right, if the value of the land over which the right is taken is thereby depreciated

(1) Section 7 CPA 1965

- Injurious affection:
 - a factor which depreciates the value of the claimant’s land;
 - e.g. construction works; use of the acquired land; works constructed;
 - unlike s.10 CPA 1965, not limited to circumstances in which a right of action would have existed if the acquiring authority had not been acting under statutory powers; and
 - s. 44 LCA 1973 - assessment of compensation by reference to the whole of the works, if works situated partly on land acquired and partly elsewhere.

- Other land:
 - the fact that land is in common ownership is insufficient – must be ‘held therewith’;
 - “so connected with or related to the lands left that the owner of the latter is prejudiced in his ability to use or dispose of them to advantage by reason of the severance” (**Cowper**);
 - need not be (1) in same title or (2) geographically contiguous.

(1) Section 7 CPA 1965

- Assessment of compensation:
 - additional to the value of the land taken;
 - amount by which the claimant's other land is depreciated in value;
 - statutory rules which apply to the assessment of the value of the land taken do not apply;
 - legitimate to have regard to the anticipated future use of the land acquired
 - compensation may include depreciation in the development value of the claimant's other land or loss due to deferment of the development value;
 - not measured by the cost which claimant incurs to overcome the consequences of compulsory acquisition.

- Accommodation works – lessen effect of severance. E.g. bridge over road.

(2) Section 10 CPA 1965

- No land taken
- Value of interest in land depreciated as a result of works authorised by statute
- Does not depend on works being carried out on land which has been compulsorily acquired
- Right to compensation may be excluded by authorising Act
- Not DCOs - but see s. 152 PA 2008

- McCarthy Rules
 - The loss must result from an act made lawful by statute
 - The loss must be such that in the absence of statutory powers it would have given rise to a cause of action
 - The loss must arise from physical interference with the land or with a right enjoyed with it, and must result in depreciation of the value of the claimant's land
 - The loss must arise from the execution of the authorised works and not from their use

(2) Section 10 CPA 1965

- Rules which apply to damages in tort – entitlement to compensation for all the loss which is the direct and foreseeable consequence of the act.
- Cost of repair – put back in position as if wrong not committed.
- May also be diminution in value.
- No entitlement to a “ransom” element.
- Betterment cannot be set off unless that is an express statutory provision.
- Do not take mitigating steps into account.

(3) Pt 1 LCA 1973

- Enacted to provide compensation where no right under ss. 7 & 10 CPA 1965.
- Right to compensation applies where:
 - value of claimant's interest in land has been depreciated;
 - depreciation is caused by physical factors;
 - physical factors are caused directly by the use of public works;
 - use of the public works is immune from an action in nuisance;
 - claimant's interest qualifies;
 - correct time and manner of claim;
 - compensation exceeds £50.

(3) Pt 1 LCA 1973

- Physical factors –
 - s. 1(2) LCA 1973: noise, vibration, smell, fumes, smoke, artificial lighting, discharge on to land of any solid or liquid substance;
 - source must be situated on or in the public works;
 - aerodrome exception – “Physical factors caused by an aircraft arriving at or departing from an aerodrome shall be treated as caused by the use of the aerodrome whether or not the aircraft is within the boundaries of the aerodrome” (s. 1(5) LCA 1973)

- Public works – s. 1(3) LCA 1973:
 - any highway;
 - any aerodrome;
 - any works or land, other than a highway or aerodrome, provided or used in the exercise of statutory powers.

(3) Pt 1 LCA 1973

- May encompass alterations to public works – specific provisions for highways and aerodromes.
- Compensation:
 - depreciation of value of claimant's interest;
 - value assessed by reference to: nature of the interest; condition of the land on the date of service of the claim; and rr. 2 – 4 LCA 1961;
 - account has to be taken of the use of the public works, as on the first claim day, and of any intensification which may then be reasonably expected of the use of those works;
 - account is to be taken of benefit of any sound-proofing carried out or available;
 - set off – increase in value attributable to use/prospective use of public works.

(4) Non-statutory blight schemes

- Voluntary schemes
- Flexible in scope – “targeting”
- Local feeling/opposition

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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