

**Welcome to Landmark Chambers’
‘Delivering Major Infrastructure: Part 3 – Executing
the land acquisition strategy’ webinar**

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

Your speakers today are...



Reuben Taylor QC (Chair)



David Forsdick QC

Topics:
Executing the land acquisition strategy: the landowners/occupiers perspective



Matthew Dale-Harris

Topics:
Executing the land acquisition strategy: early payments and engagement



Nick Grant

Topics:
Executing the land acquisition strategy: powers of entry & acquiring the land

Executing the land acquisition strategy: powers of entry & acquiring the land



Nick Grant

Acts and SIs

- Land Compensation Act 1961 – “LCA”
- Compulsory Purchase Act 1965 – “CPA”
- Land Compensation Act 1973 – “LCA ‘73”
- Compulsory Purchase (Vesting Declarations) Act 1981 – “GVDA”
- Acquisition of Land Act 1981 – “ALA”
- Town and Country Planning Act 1990 – “TCPA”
- Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004/2595 – “2004 Regs”
- Planning Act 2008 – “PA 2008”
- Housing and Planning Act 2016 – “HPA”
- Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017/3 – “2017 Regs”

Authorities

- ***Holloway v Dover Corpn*** [1960] 1 WLR 604
- ***Parker (Trustees of the Ware Park Estate) v Herford BC*** (1967) 18 P&CR 315
- ***Ravenseft Properties Ltd v Hillingdon LBC*** (1969) 20 P&CR 483
- ***English, Welsh & Scottish Railways v SST*** [2002] EWHC 2641 (Admin)
- ***R (Argos Ltd) v Birmingham CC*** [2011] EWHC 2639 (Admin)
- ***Sawkill v Highways England Co Ltd*** [2020] EWHC 801 (Admin)
- ***Anixter v SST*** [2020] EWCA Civ 43

Outline

- Powers of entry
- Acquiring the land
 - Procedure under the Compulsory Purchase Act 1965
 - General Vesting Declarations

S. 172 HPA

- S. 172:
 - (1) A person authorised in writing by an acquiring authority may enter and survey or value land in connection with a proposal to acquire an interest in or a right over land*

- Key points:
 - “in connection with” is broad
 - Generally available to all Acquiring Authorities (“AA”) (s. 172(6))
 - Sits alongside and overlaps with s. 53 PA 2008: **Sawkill**, [42]-[45]
 - What is authorised can be extensive: **Sawkill**, [50]-[51]

S. 172 HPA

- S. 173: JP can authorise use of force provided
 - Force limited to reasonably necessary
 - Warrant specifies no. of occasions
 - Evidence given on oath
- S. 174: notice requirements
 - Every owner occupier given min. 14 days notice
 - Includes
 - statement of rights to compensation
 - copy of warrant of force
 - details of certain activities if intended (e.g. excavation)

S. 172 HPA

- S. 175: enhanced procedures for statutory undertakers (as defined in s. 16-17 ALA, or Part 11 TCPA) who object
- S. 176: right to compensation for damage suffered as a result. Disputes referred to UT
- S. 177: offences
 - Obstructing another “without reasonable excuse”
 - Disclosing confidential information

Land Acquisition

- The story so far...
- AA to serve Confirmation Notice – s. 15 ALA
 - Service
 - Publicity
 - Timing
 - Form – see reg. 3 2004 Regs
 - Contents
- Thereafter? CPA or GVD

CPA 1965

- Step 1: AA serve Notice to Treat (“NTT”)
 - Does not have to acquire all land or interests in CPO (*Holloway*)
 - AA does not need to know land will be acquired (*EW&S Railways*)
- Step 2: Owner may
 - Claim compensation
 - Submit counternotice
- Step 3: Compensation – agreed or referred to UT
- Step 4: Owner conveys property to AA

CPA 1965: NTT

- S. 4 & 5 CPA
 - Service on “all persons interested in, or having power to sell and convey or release, the land, so far as known [...] after making diligent inquiry”
 - Untraced owners? S. 30 CPA, s. 6(4) ALA, sched. 2 CPA
 - Form & Contents (s. 5(2))
 - Timing
 - After a CPO made (***Trustees of the Ware Park Estate***)
 - Before entry onto land
 - <3 years from date CPO operative (s. 4) unless challenge (s. 4A)
 - Time limited (3 years save in certain circs) (s. 5(2A)(2B))

CPA 1965: NTT

- Effect?
 - Obligation to acquire and sell once compensation ascertained
 - Compensation can be referred to UT (s. 6 CPA)
 - AA can serve notice of entry and enter land (ss. 11, 11A, 11B CPA)
 - “Fixes” interest in respect of which compensation payable
 - Owner then has opportunity to
 - Make claim for compensation
 - Seek submit counternotice

CPA 1965: Owner's actions

- Submit a claim for compensation
 - Time limit
 - Prescribed form

- Submit counternotice under s. 8/sched. 2A CPA
 - Applies where AA proposes to acquire “part of” house, building, or factory
 - Counternotice cancels s. 11 notice of entry
 - LA must withdraw NTT, accept CN, or refer CN to UT
 - “material detriment” test - see s. 58 LCA ‘73 and ***Ravenseft***
 - Small parcels - see s. 8(2)-(3) CPA
 - Time limit - ***Anixter v SST***

GVDs: General

- Simplifies the process – execution of a GVD (s. 7-9 GVDA):
 - Vests land in AA as if deed poll executed under CPA form “vesting date”
 - Entitles AA to enter land and take possession (save for minor tenancies)
 - Converts titles of owners into right to compensation
 - Owners deemed to have acknowledged obligation to provide copy of title documents to AA
 - Entitles landowner to serve counternotice under sched. A1 GVDA
- Why use it?
 - Quicker, simpler
 - Avoids “unknown owner” issues

GVDs: Execution

- S. 4(1) GVDA –

4(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed).

- Prescribed Form – Form 1 2017 Regs
- Cannot execute RE any land over which there is an active NTT

GVDs: Execution

- Time limits
 - Not before CPO has come into operation (s. 5 GVDA)
 - Not after three years from the date on which CPO has come into operation (s. 5A GVDA)
 - Extended in the case of challenge under s. 23 ALA (s. 5B GVDA)

- Vesting date
 - For land specified in GVD
 - First day after end of period specified in declaration
 - If counternotice served, day determined as vesting date (s. 4(3) GVDA)
 - For land deemed specified (sched. A1) day determined (s. 4(4) GVDA)

GVDs: Execution

- Service of notices
 - Must serve a notice in “prescribed form” (Form 2, 2017 Regs)
 - Time: “as soon as may be”
 - On:
 - Every occupier of any land specified in declaration
 - Every other person who has given information to AA with following an s. 15 ALA notice
 - Contents
 - Specifying the land
 - Stating effect of GVD
 - S. 329 TCPA applies (how to serve, etc.)

GVDs: Challenges

- Challenges?
 - Not complied with procedure
 - Power to make GVD may only be exercised for purpose for which CPO authorised ***R (Argos Ltd)***
 - Change of scheme? ***R (Argos Ltd)***

Executing the land acquisition strategy: early payments and engagement



Matthew Dale-Harris

Topics

- Negotiating early settlement
- Blight notices
- Advance payment

Early settlement

- Continuing obligation to engage – cf Ian Cunliffe’s talk in Part 1.
- Promoters should have offered to agreed minimum levels of compensation.
- Ongoing requirements of RICS professional statement (2017)
- Tension between needs of spending profile and benefits of early settlement
- Blight notice and advance payment procedures offer Claimants chance to bring forward payments

Blight notices (1): available when?

- Narrow legal term – not “blight” generally
- Schedule 13 of TCPA 1990:
 - Safeguarded land (i.e. HS2 safeguarding)
 - Land within location identified as suitable for NSIP in an NPS
 - Land identified for highways construction or improvements
 - Land identified for CPO in Order, private Act, TWAO or DCO.
- NB large schemes often have own non-statutory schemes; see also Highways England’s guidance on discretionary early purchase.

Blight notice (2): available to whom?

- Owner-occupier of:
 - Freehold or leasehold (at least 3 years unexpired)
 - Business premises with net annual value for rating purposes of £44,200 in Greater London; £36,000 elsewhere in England
 - Agricultural units
- Unless land subject to CPO, owner must show reasonable endeavours to sell at a realistic unblighted price.
- Notice must relate to the whole of a hereditament or agric. unit (or such part as owner owns)

Blight Notices (3): procedure

- Notice must be served in prescribed form on public authority by whom land is liable to be acquired
- Counter notice must be served within two months, objecting on stat grounds
 - Invalidity must be raised in the CN: ***Binns v SST*** [1986]
- If CN served – refer objection to Lands Tribunal under s.153 TCPA.
- If no CN or objections dismissed – notice becomes effective and notice to treat is deemed to have been served: s.154 TCPA

Blight Notices (4): main grounds of objection

s.151(4) grounds:

- a) No part of hereditament is blighted – must fall within stat. definition, not enough that it is difficult to sell: ***McDermott v DFT*** [1984]
- b) AA does not propose to take any part (unless within DCO land take)
- c) AA only propose to take part of hereditament. Difficult to compel to take more within material detriment: ***Lake v Cheshire CC*** [1976]
- ...
- g) That conditions re marketing have not been fulfilled. In ***Head v Eastbourne*** [2001], 7 months of marketing sufficient.

Advance Payments (1): the pre-April 2018 system

Advance payment of 90% of AA's estimated compensation figure. Subject to criticism:

By Claimants

- Payments often delayed or significantly below sum sought.
- Lack of clarity as to information to be provided.
- Only way to challenge decision is by way of judicial review.
- Businesses still have to fund their move if the earliest date on which they can receive AP is date of possession.

BY AAs

- Level of information provided is often insufficient to estimate amount of compensation
- Need to be cautious so as to avoid overpayment (recovery of excess may be difficult)

Advance Payments (2): recent reforms

Between them the Housing and Planning Act 2016 and Neighbourhood Planning Act 2017 brought in significant amendments: in effect from 6 April 2018. **Does not have retrospective effect.**

- 1) Clarify information to be provided in request (s.52(2))
- 2) New duty to respond to request (s.52(2A))
- 3) Timing of advance payment (s.52(1B),(4))
- 4) Payment of interest (s.52A and 52B)
- 5) Clearer provisions in relation to repayment (s.52AZA)
- 6) Provide AP in relation to compensation for temporary possession (s.24 of NPA 2017)

Advance Payments (3): new procedure

- 1) Claimant makes request, providing information to enable AA to determine initial estimate of compensation – see model claim form
- 2) AA must come to a view within 28 days (either initial estimate or request for further information)
- 3) AA must make payment either at date of GVD/notice of entry, or within 2 months of request/provision of further info
- 4) AP should be registered as local land charge
- 5) If AA's estimate is less than proper compensation, AA must pay balance
- 6) If final figure is less than the AP, or notice to treat withdrawn, then excess is recoverable
- 7) If land not acquired then AP can be recovered from claimant or successor in title.

Advance Payments (4): other key points for AAs

- AA under an obligation to make further advance payment when they conclude original was based on too low an estimate
- So far no rate of interest has been specified for purpose of s.52B(1). Govt has expressed concern that Claimants may “game” the system if rate above BOE lending rate.
- Leaves advance payment regime with lack of teeth?

Executing the land acquisition strategy: the landowners/occupiers perspective



David Forsdick QC

Overall Context - “Cards Stacked against me” (1)

Feels like “Cards stacked against me” at all 4 stages:

1. Planning
2. CPO
3. Actual Acquisition
4. Compensation

Overall Context: “Cards stacked against me” (2)

1. On planning justification:

(a) limited voice – esp on NPS and DCO;

(b) major national need against individual harm

(c) processes specifically designed to favour the quick grant and to avoid individual harm preventing major projects – no surprise;

(d) front loading engagement effectively meaningless if route/location set

2. CPO tied into that process – feels like “last resort”/”compelling need in the public interest” to override private law rights is a meaningless mantra

Those advising small businesses/individuals need to be very upfront as to the above reality – in deciding overall strategy and whether to actively engage at this stage

Overall Context: “Cards stacked against me” (3)

3. Acquisition: Once powers of compulsory acquisition given, AA is (largely) in control of:
 - (1) whether there is a purchase at all;
 - (2) timing of any purchase
 - (3) extent of purchase and
 - (4) During period of uncertainty, can be seriously out of pocket if adequate compensation delayed
4. Compensation: LO has uncertainty as to which route (closure or relocation) to pursue and choice may be judged inappropriate later; compensation rules often prevent full compensation; costs risk of taking to LC

Overall Context: Deliberate Structure to aid AA

This whole structure is very deliberate

First, to ensure that the national need can be delivered - and is not left unmet because of individual harm

Second, to give the AA control over the project, extent, timing – against because that has been judged necessary to allow these very complex projects to be delivered.

Third, to ensure that only fair compensation is paid - with rigorous controls of the purse strings.

This is the basic reason why A1P1/fairness challenges to the whole process fail when powers exercised rationally – national public interest is so weighty in MoA

A Case Study – partly hypothetical

1. Major national project with fixed end date.
2. Family business right on edge of the development. Heavily dependent on location for its considerable success. C&C supplier on main arterial route - very high drive past trade.
3. O/O and bought v cheap as a poor quality previously industrial building – OMV limited
4. No certainty as to whether will be needed. Attempts to get clarity as to extent of CPO and access if no CPO during the statutory processes failed.
5. Alternative business locations offered –at market rent, much better units but in wrong location; multiple businesses set up to compete amongst themselves for the units.
6. Offer of compensation all in of £450k - take it or leave it.

Case Study - cont...

4. Stayed put pending clarity and business success increased
5. Rest of estate vacated and road became a dumping ground – access restricted. CPO left to the last possible moment.
6. Offers of alternative accommodation made and when AA terms not agreed, W/D;
7. Told total extinguishment not necessary so eventually moved to new location - 90% based on losses on relocation. Alternative location treated as at least as good because better quality even though much worse location. Therefore just costs of move. But growing business nose dived – diverted energy from other growth areas
8. No negotiations for 3 years - David and Goliath situation.
9. Even when business referred to LC and got QC on board, every delay/argument
10. 4 years after order, and day before LC started – full compensation on TE including consequential losses on other facilities - £3.5m
11. But client still said – “worn down by the games. Should have taken the first offer”.

Maximising protection in that context

1. On major schemes (HS2) push for bespoke procedural and compensation safeguards – some success including with extra statutory schemes
 - (1) Planning harm is only justified if....
 - (2) Compulsory purchase is only justified as last resort in the public interest if.....
2. Private treaty: seek early agreement to fix timing, extent and/or price
 - (1) overcoming reluctance of AA;
 - (2) making a compelling case that cheaper to do it quick rather than slow
 - (3) show determination at the outset
3. JR - not a realistic option except in most extreme case – can't force AA - must persuade

The AA's Negotiating Advantages

1. Issues for businesses: cash flow, whether to relocate or TE; alternative sites and timing of relocation; diverting energies; sunk investment/effort; how to evidence losses – all of these give the AA major negotiating advantage
2. Need a strategy to maximise LO negotiating position and to overcome the inbuilt negotiating advantages of AA in context of:
 - (1) on cashflow can be huge disconnect between when costs are incurred and when full compensation received – for smaller businesses crippling and therefore strong negotiating lever for AA
 - (2) 90% determination is largely in hands of AA;
 - (3) AA is often largely in control of alternative locations and sees them as acceptable and needs market value for them
 - (4) AA controls timing/has unlimited resources and under great cost pressure to keep comp down/can be sucked in to never ending disputes; diversion of effort from business huge issue for LO but reducing compensation is the AA teams business.

Getting the Best Deal – overcoming the AA's negotiating advantages

1. Keeping all evidence of losses – and showing AA that you are doing so
2. Having a clear business plan - as to how to minimise losses
3. Have a clear case strategy from the outset – ie. No objection to CPO but marker down as to requirements for A/S and lack of them and risk of TE; put together early pack to AA on existing and future losses and how to minimise them
4. Showing that determination and resources/determination to get fair compensation at the outset
5. Pick your battles – do not allow impression to be formed that you always exaggerate every problem and every head of claim – because those cases go to bottom of pile.

Evidencing Losses

1. Evidencing losses: all the following must be kept - assume AA will push for proof on every point and rely on any gaps – this is the single most important thing:
 - (1) full records of R&E over time;
 - (2) details of diversion of trade to other branches;
 - (3) loss of customers to competitors – customer surveys/advertising campaigns etc..
 - (4) full records of A/S search and contemporaneous/photographic evidence as to why sites rejected;
 - (5) hours spent on dealing with relocation; evidence of diversion of effort from other projects
 - (6) bank finance – inquiries/ terms/ interest rate/ security; cost of capital
 - (7) full contemporaneous record of why individual business decisions were made in the shadow of CPO
 - (8) Accounting snapshots/ reality checks both ways

The Strategy:

1. Combination of evidence, business strategy and clear determination combined with explanation as to how quick settlement will reduce losses and costs should get your case to top of pile.
2. Once all that is in place, offer mediation early on. You will have taken initiative, reduced AA's inbuilt advantages and shown them that delay will cost
3. Robust and quick response to any queries/clearly evidenced.

Reference to Land Chamber

1. Normally seen as last resort – but that just plays to AA's advantage
2. My usual approach is to have pleadings ready for LC – and show them to other side early on. Based on business plan/ A/S search, business case as to why decisions were/are being made; actual and future anticipated losses under each head.
3. Timing is obviously a key issue: go too soon and losses inchoate; go too late and costs mount up. Key advice – show you are ready to go early but actually hold off as long as (cash flow) possible. Get to position where the evidence/business logic is so strong that can give ultimatum to AA – settle or have a full LC fight on your hands.

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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