

Executing the land acquisition strategy: early payments and engagement



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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?

Thank you for listening

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