

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



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## 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.

# Thank you for listening

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