

Forward thinking.
Straight talking.

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

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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

Introduction

Ian Cunliffe

- Ian Cunliffe is a Director (and Chartered Surveyor) and Head of the Infrastructure Development team at Gateley Hamer.
- Ian has worked on the country's leading infrastructure projects including Hinkley Point C, HS2 and over 20 DCOs as Project Director and Expert Witness.
- Ian has significant experience of managing the land workstream incorporating optioneering, negotiation, objection management and land delivery.



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 Crichton 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.)

Get in touch

Ian Cunliffe

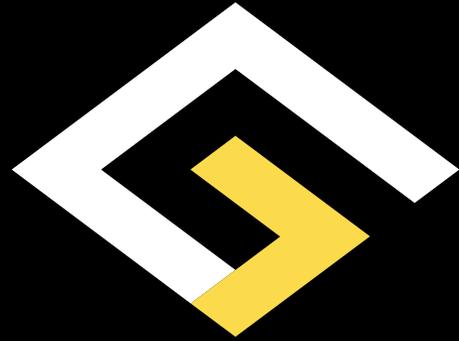
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