

Preparing the land acquisition strategy – neighbouring land



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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

Thank you for listening

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