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The scheme cancellation assumption

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Introduction

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- The “no-scheme” principle: ***Pointe Gourde***: compensation “cannot include an increase in value that is entirely due to the scheme underlying the acquisition”
- “Value to the owner”

- ***Waters v Welsh Development Agency*** [2004] 1 WLR 1304 at [18]: “When granting a power to acquire land compulsorily for a particular purpose Parliament cannot have intended thereby to increase the value of the subject land. Parliament cannot have intended that the acquiring authority should pay as compensation a larger amount than the owner could reasonably have obtained for his land in the absence of the power…” (Lord Nicholls)

- The “no-scheme world”

Amendments to the Land Compensation Act 1961

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- Complexities in the previous iteration of the Land Compensation Act 1961
- Amendments made by Neighbourhood Planning Act 2017 with effect from 22 September 2017

The provisions of the Land Compensation Act 1961

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S. 5 LCA 1961

Rules for assessing compensation.

Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:

(1) No allowance shall be made on account of the acquisition being compulsory;

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise;

(2A) The value of land referred to in rule (2) is to be assessed in the light of the no-scheme principle set out in section 6A.

The provisions of the Land Compensation Act 1961

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S. 6A LCA 1961

No-scheme principle.

(1) The no-scheme principle is to be applied when assessing the value of land in order to work out how much compensation should be paid by the acquiring authority for the compulsory acquisition of the land (see rule 2A in section 5).

(2) **The no-scheme principle is the principle that**— (a) any increase in **the value of land** caused by **the scheme for which the authority acquires the land**, or by the prospect of that scheme, is to be disregarded, and (b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.

The provisions of the Land Compensation Act 1961

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The "**no-scheme rules**": s. 6A(3) LCA 1961

(3) In applying the no-scheme principle the following rules in particular (the "no-scheme rules") are to be observed.

(4) **Rule 1**: it is to be assumed that the scheme was cancelled on the relevant valuation date.

(5) **Rule 2**: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.

The provisions of the Land Compensation Act 1961

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(6) **Rule 3**: it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.

(7) **Rule 4**: it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.

The provisions of the Land Compensation Act 1961

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(8) **Rule 5**: if there was a reduction in the value of land as a result of— (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or (b) the fact that the land was blighted land as a result of the scheme, that reduction is to be disregarded.

Then s. 6A(10):

- "See also section 14 for assumptions to be made in respect of planning permission"

What is the “Scheme”?

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- S. 6D(1) LCA 1961: “the scheme of development underlying the acquisition”

- Subject to s. 6D(2)-(5)
  - (2): Urban development areas, new towns, Mayoral development areas
  - (3): “Relevant transport projects”

What is the “Scheme”?

Upper Tribunal to resolve disputes: identify the underlying scheme “as a question of fact” (s. 6D(5)):

(a) the underlying scheme is to be taken to be **the scheme provided for by the Act, or other instrument, which authorises the compulsory acquisition** unless it is shown (by either party) that the underlying scheme is a scheme larger than, but incorporating, the scheme provided for by that instrument, and

(b) except by agreement or in special circumstances, the Upper Tribunal may permit the acquiring authority to advance evidence of such a larger scheme **only** if that larger scheme is one identified in the following read together— (i) the instrument which authorises the compulsory acquisition, and (ii) any documents made available with it.

Final questions

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- Can “special purchasers” be taken into account in assessing compensation?
- Can marriage / ransom value be taken into account?

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Thank you for listening

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